(19,392.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 292.

JOSEPH LOCHNER, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF NEW YORK.

IN ERROR TO THE COUNTY COURT OF ONEIDA COUNTY, STATE OF NEW YORK.

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a Court of Appeals.

STATE OF NEW YORK, *ss*:

Pleas in the court of appeals held at the capitol, in the city of Albany, on the 12th day of January, in the year of our Lord one thousand nine hundred and four, before the judges of said court.

Witness, the Hon. Alton B. Parker, chief judge, presiding.

W. H. SHANKLAND, Clerk.

Remittitur, January 13th, 1904.

THE PEOPLE, ETC., Resp'd't,
ag'st
JOSEPH LOCHNER, App'l'nt.

Be it remembered, that on the second day of December, in the year of our Lord one thousand nine hundred and two, Joseph Lochner, the appellant in this action, came here into the court of
b appeals, by Lindsley & Mackie, his attorneys, and filed in the said court a notice of appeal and return thereto from the judgment of the appellate division of the supreme court in and for the fourth judicial department. And The People of the State of New York, the respondent in said action, afterward appeared in said court of appeals by Timothy Curtin, district attorney, its attorney.

Which said notice of appeal and the return thereto filed as aforesaid, are hereunto annexed.

Whereupon, the said court of appeals having heard this cause argued by Messrs. William S. Mackie and Smith M. Lindsley, of counsel for the appellant, and by Mr. Timothy Curtin, district attorney, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment of conviction appealed from herein be and the same hereby is affirmed.

And it was also further ordered, that the record aforesaid, and the proceedings in this court, be remitted to the Oneida county court, there to be proceeded upon according to law. Therefore, it is considered that the said judgment conviction be affirmed, as aforesaid. And hereupon, as well as the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the Oneida county court before the judge thereof, according to the form of the statute in such case made and provided, to be en-
c forced according to law, and which record now remains in the said Oneida county court before the judge thereof, &c.

W. H. SHANKLAND,
Clerk of the Court of Appeals of the
State of New York.

Court of Appeals, Clerk's Office.

ALBANY, January 13th, 1904.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached thereto.

[SEAL.] W. H. SHANKLAND, Clerk.

d Court of Appeals.

THE PEOPLE OF THE STATE OF NEW YORK, Respondent,
vs.
JOSEPH LOCHNER, Appellant.

Appeal Book.

Timothy Curtin, district attorney for respondent, Rome, N. Y.
Lindsley & Mackie, attorneys for appellant, Utica, N. Y.
Filed April 4, 1904, in Oneida Co. clerk's office.

1 Supreme Court, Appellate Division, Fourth Department.

THE PEOPLE OF THE STATE OF NEW YORK, Respondent,
vs.
JOSEPH LOCHNER, Appellant.
} Statement.

Defendant was indicted for misdemeanor, second offence, to wit: violation of article VIII, section 110, of chap. 415, Laws of 1897, known as the labor law, in requiring and permitting an employee working for him in his bakery to work more than sixty hours in one week. Indictment was sent to Oneida county court from the trial term of the supreme court, held at Rome, N. Y., in October, 1901, at which term defendant interposed demurrer. November 11th, 1901, in Oneida county court, demurrer to indictment argued. February 3rd, 1902, order disallowing demurrer entered. February 12th, 1902, defendant arraigned in Oneida county court and refused to plead. Judgment of conviction thereupon entered. County judge of Oneida county granted certificate of reasonable doubt and defendant served notice of appeal.

2 Supreme Court, Oneida County.

THE PEOPLE OF THE STATE OF NEW YORK
against
JOSEPH LOCHNER.
} Indictment.

The grand jury of the county of Oneida, by this indictment, accuse Joseph Lochner of the crime of misdemeanor, second offence,

to wit: with the violation of article VIII, section 110, of chapter 415 of the Laws of 1897, known as the labor laws of the State of New York, and the said defendant wrongfully and unlawfully required and permitted an employee working for him in his biscuit, bread and cake bakery and confectionery establishment, at the city of Utica, in this county, to work more than sixty hours in one week, committed as follows:

That the said Joseph Lochner on the 21st day of December, one thousand eight hundred and ninety-nine, after having been duly arrested upon the complaint of Frank Couverette, charged with violation of article VIII of the said labor law, in permitting his employees to work more than sixty hours in one week, plead guilty to the charge in and at the city court of Utica, a court of competent jurisdiction, and was sentenced to pay a fine of twenty dollars, or in default thereof, to stand committed for twenty days in the Oneida county jail, and the said defendant paid his said fine of twenty dollars. That the said defendant after such conviction upon his plea of guilty, wrongfully, unlawfully and knowingly, with the intent on his part to violate the law, permitted and required one Aman Schmitter, an employee in his employ, to work more than sixty hours in one week, during the week commencing April 19th and
3 ending April 26th, one thousand nine hundred and one, at his biscuit, bread and cake bakery and confectionery establishment situated at numbers 82–84 South street, in the city of Utica, this county, and thereby committing the crime of misdemeanor, second offense.

Contrary to the form of the statute in such case made and provided, and against the peace of the People of the State of New York, and their dignity.

TIMOTHY CURTIN,
District Attorney of Oneida County.

Endorsed: "A true bill."

SAMUEL R. WRIGHT, Foreman.

Supreme Court, Oneida County.

THE PEOPLE OF THE STATE OF NEW YORK *against* JOSEPH LOCHNER. } Demurrer.

The defendant Joseph Lochner, above named, demurs to the indictment presented by the last grand jury on the 22nd day of October, 1901, charging him with the crime of misdemeanor, second offense, to wit: with the violation of article VIII, section 110, of chapter 415 of the Laws of 1897, known as the labor laws of the State of New York, on the following grounds:

First. That more than one crime is charged in the indictment,

within the meaning of section 278 of the Code of Criminal Procedure of the State of New York.

4 *Second.* That more than one crime is charged in the indictment, within the meaning of section 279 of the Code of Criminal Procedure of the State of New York.

Third. That the facts stated do not constitute a crime.

Wherefore this defendant asks judgment of the court that he be dismissed and discharged from the said premises specified in said indictment.

Dated October 30, 1901.

WILLIAM S. MACKIE,
Attorney for Defendant.

Office and postoffice address, 115 Genesee St., Utica, N.Y.

At a term of the county court, held in and for the county of Oneida, at the court house in the city of Rome, N. Y., November 11, 1901.

Present: Hon. Watson T. Dunmore, justice presiding.

Supreme Court, Oneida County.

THE PEOPLE OF THE STATE OF NEW YORK *against* JOSEPH LOCHNER. } Order Disallowing Demurrer.

A demurrer to the indictment having been interposed by the defendant through his counsel, William S. Mackie, and

5 After hearing William S. Mackie, attorney for the said defendant, in favor of such demurrer, and Timothy Curtin, district attorney, in opposition thereto,

Ordered, that the said demurrer be and the same is hereby overruled and disallowed. Defendant may plead upon the first day of the February, 1902 term of this court, at 2 o'clock p. m.

Enter

W. T. DUNMORE,
Oneida County Judge.

At a trial term of the county court held at the court house, in the city of Utica, in and for the county of Oneida, commencing on Monday, the 10th day of February, 1902.

Before Hon. W. T. Dunmore, Oneida county judge, presiding.

THE PEOPLE *vs.* JOSEPH LOCHNER. } Judgment of Conviction, etc.

Defendant, indicted for the crime of misdemeanor, second offense, to wit: with the violation of article VIII, section 110, of chap. 415, of the Laws of 1897, know as the labor laws of the State of New

York, and the defendant having refused to plead, and having been thereupon duly convicted of misdemeanor second offense, is this 12th day of February, 1902, sentenced to pay a fine of $50 and to stand committed until paid, not to exceed 50 days in the Oneida county jail. Bail allowed in the sum of $50 and bond filed.

6 STATE OF NEW YORK, } ss:
Oneida County, }

I certify that the above is a true extract from the minutes of said court kept by me as clerk thereof. Witness the seal of said
[L. S.] court, at the city of Utica, this 20th day of February, 1902.
JOSEPH PORTER, Clerk.

Oneida County Court.

THE PEOPLE OF THE STATE OF NEW YORK } Certificate of Reasonable Doubt.
vs.
JOSEPH LOCHNER.

The defendant above named, having duly made application in open court and during the term at which he was convicted, for a certificate of reasonable doubt as to whether or not the judgment of this court should stand, and after hearing William S. Mackie, counsel for said defendant, and Hon. Timothy Curtin, district attorney of Oneida county.

I, the undersigned, county judge of Oneida county, the judge holding the term at which said defendant was convicted, do hereby certify, that in my opinion, there is reasonable doubt whether the judgment of conviction against the defendant above named for the crime of misdemeanor, second offense, in requiring and permitting an employee, working for him in his buscuit, bread and cake bakery and confectionery establishment at Utica, N. Y., to work more than sixty hours in one week, rendered in the Oneida county
7 court held at Utica, in and for the county of Oneida, N. Y., on the 12th day of February, 1902, should stand.

Dated February 12, 1902.

W. T. DUNMORE,
Oneida Co. Judge.

Oneida County Court.

THE PEOPLE OF THE STATE OF NEW YORK } Notice of Appeal.
vs.
JOSEPH LOCHNER.

Take notice, that the defendant above named, appeals to the appellate division of the supreme court from judgment of conviction of the crime of misdemeanor, second offense, in requiring and per-

mitting an employee working for him in his biscuit, bread and cake bakery and confectionery establishment at Utica, N. Y., to work more than sixty hours in one week, rendered against him by the Oneida county court at a term thereof, held at Utica, in and for the county of Oneida, on the 12th day of February, 1902.

Dated February 12, 1902.

Yours, etc.,
WILLIAM S. MACKIE,
Attorney for Defendant, 115 Genesee Street, Utica, N. Y.

To the clerk of the county of Oneida and to Hon. Timothy Curtin, district attorney of Oneida county.

8 Oneida County Court.

THE PEOPLE OF THE STATE OF NEW YORK
vs.
JOSEPH LOCHNER. } Stipulation.

It is hereby stipulated that the foregoing indictment, demurrer, order disallowing demurrer, judgment of conviction, certificate of reasonable doubt, and notice of appeal, are true copies of the originals and the whole thereof on file in Oneida county clerk's office, and a certification of said papers by the clerk of Oneida county is hereby waived.

Dated February 26, 1902.

TIMOTHY CURTIN,
District Attorney
WILLIAM S. MACKIE,
Attorney for Defendant.

Supreme Court, Appellate Division, Fourth Department.

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,
vs.
JOSEPH LOCHNER, Appellant. } Affidavit No Opinion.

ONEIDA COUNTY, ss:

William S. Mackie, being duly sworn, says that he is the
9 attorney for the defendant and appellant above named; that no opinion was given in the court below upon disallowing the defendant's demurrer herein, nor upon the judgment of conviction.

WILLIAM S. MACKIE.

Sworn to before me Feb. 24th, 1902.

L. N. SOUTHWORTH,
Notary Public, Oneida Co., N. Y.

Supreme Court, Appellate Division, Fourth Judicial Department, Clerk's Office, Rochester, N. Y.

I, Newell C. Fulton, clerk of the appellate division of the supreme court in the fourth judicial department, do hereby certify that the following is a copy of the order made by the said court upon the appeal in the above entitled action or proceeding, and entered in my office on the 13th day of May, 1902, and that the original case or papers upon which said appeal was heard are hereunto annexed.

In witness whereof, I have hereunto set my hand and affixed the seal of the said court, at the city of Rochester, this 16th day of May, 1902.

[SEAL.] NEWELL C. FULTON, Clerk.

10 At a term of the appellate division of the supreme court, held in and for the fourth judicial department, at the city of Rochester, on the 13th day of May, 1902.

Present: Honorable Peter B. McLennan, senior associate judge, presiding. Honorable Alfred Spring, Honorable Pardon C. Williams, Honorable Frank H. Hiscock, Honorable John M. Davy, associate justices.

THE PEOPLE, Respondent, vs. JOSEPH LOCHNER, Appellant, } Order of Affirmance on Appeal from Judgment.

The above named defendant and appellant in this action having appealed to the appellate division of the supreme court from a judgment of conviction of the county court of Oneida county, and entered in the clerk's office of the county of Oneida, on the 12th day of February, 1902, and the said appeal having been argued by Mr. William S. Mackie, of counsel for the appellant, and Mr. Timothy Curtin, of counsel for the respondent, and due deliberation having been had thereon,

It is hereby ordered and adjudged that the judgment so appealed from be, and the same is hereby affirmed, and case remitted to the county court of Oneida county, pursuant to section 547 of the Code of Criminal Procedure. Opinion by Davy, J., Spring and Hiscock, JJ., concurring; McLennan and Williams, JJ., dissenting.

[SEAL.] NEWELL C. FULTON, Clerk.

11 Supreme Court, Appellate Division, Fourth Department.

THE PEOPLE OF THE STATE OF NEW YORK, Respondent, *against* JOSEPH LOCHNER, Appellant. } Judgment.

The above named defendant, Joseph Lochner, having appealed to the appellate division of the supreme court, fourth department,

from a judgment of conviction for the crime of misdemeanor, to wit: "violation of article VIII, section 110 of chapter 415 of the Laws of 1897, known as the labor laws of the State of New York," heretofore rendered against him in the Oneida county court, and entered in the clerk's office of the county of Oneida on the 12th day of February, 1902, adjudging the defendant guilty of the crime charged in the indictment and sentencing him to pay a fine of fifty dollars and that he stand committed until paid not to exceed fifty days in the Oneida county jail, and the said appeal having been duly heard at a term of the appellate division of the supreme court for the fourth department, and an order of said appellate division having been thereafter and on the 13th day of May, 1902, duly made and entered in the office of the clerk of the said appellate division, ordering and adjudging that the judgment of conviction here appealed from be affirmed.

Now, on motion of Timothy Curtin, district attorney of Oneida county, it is hereby adjudged and determined that the judgment of conviction here appealed from be, and the same is hereby, affirmed.

[SEAL.] NEWELL C. FULTON, Clerk.

12 Supreme Court, Appellate Division, Fourth Judicial Department, Clerk's Office, Rochester, N. Y.

I, Newell C. Fulton, clerk of the appellate division of the supreme court, in the fourth judicial department, do hereby certify that the annexed judgment is a true copy of the original now on file in this office, and of the whole thereof.

In witness whereof, I have hereunto set my hand and affixed the seal of the said court at the city of Rochester, this 3d day of October, 1902.

[SEAL.] NEWELL C. FULTON, Clerk.

Oneida County Court.

THE PEOPLE OF THE STATE OF NEW YORK, Respondent, *vs.* JOSEPH LOCHNER, Appellant. } Notice of Appeal to Court of Appeals.

GENTLEMEN: Take notice that the defendant, Joseph Lochner, above named, appeals to the court of appeals from the order of affirmance and the judgment of the appellate division, fourth department, dated May 13, 1902, and entered in Oneida county clerk's office October 8th, 1902, affirming the judgment of conviction of the crime of misdemeanor, to wit: violation of article VIII, section 110 of chapter 415 of the Laws of 1897, known as the labor laws of the

State of New York, in requiring and permitting an employee
13 working for him in his biscuit, bread and cake bakery and confectionery establishment at Utica, N. Y., to work more than sixty hours in one week, rendered against him by the Oneida county court, at a term thereof held at Utica, N. Y., in and for the county of Oneida, on the 12th day of February, 1902.

Yours, &c., LINDSLEY & MACKIE,
Attorneys for Defendant, 115 Genesee Street,
Utica, N. Y.

Dated November 24, 1902.

To the clerk of the county of Oneida, and to Hon. Timothy Curtin, district attorney of Oneida county.

Certificate.

STATE OF NEW YORK, Oneida County, } ss.:

I, George D. Frank, acting clerk of Oneida county, do hereby certify that the foregoing are true copies of the original judgment roll on affirmance by the appellate division, and notice of appeal to the court of appeals on file in Oneida county clerk's office and of the whole thereof.

In witness whereof, I have hereunto set my hand and affixed the seal of said county this 1st day of December, 1902.

[L. S.] GEORGE D. FRANK,
Acting Clerk of Oneida County.

14 Supreme Court, Appellate Division, Fourth Department.

THE PEOPLE OF THE STATE OF NEW YORK, Respondent,
vs.
JOSEPH LOCHNER, Appellant. } Opinion.

Argued at March term, 1902; decided at May term, 1902.

Present: Hon. Peter B. McLennan, senior associate justice presiding. Spring, Williams, Hiscock and Davy, associate justices.

This is an appeal from a judgment of conviction of the defendant in the Oneida county court, for a misdemeanor in violating article VIII, section 110 of chapter 415 of the Laws of 1897 known as the labor laws.

Timothy Curtin, for respondent.

William S. Mackie, for appellant.

DAVY, *J.*:

The defendant was indicted by the grand jury of Oneida county for a violation of chapter 415 of the Laws of 1897, section 110, en-

titled "An act in relation to labor." The indictment in substance, charges that the defendant, on the 21st day of December, 1899, committed the crime of misdemeanor, second offense, to wit: with having violated article VIII, section 110 of chapter 415 of the Laws of 1897, known as the labor laws of the State of New York,
15 in permitting an employee working for him in his bakery to work more than sixty hours in one week.

Section 110 of said act provides that "No employee shall be required or permitted to work in a biscuit, bread or cake bakery or confectionery establishment more than sixty hours in any one week, or more than ten hours in any one day, unless for the purpose of making a shorter work day on the last day of the week; nor more hours in any one week than will make an average of ten hours per day for the number of days during such week in which such employee shall work."

The defendant demurred to the indictment on the ground that more than one crime is charged in the indictment within the meaning of sections 278 and 279 of the Code of Criminal Procedure, and that the facts stated in the indictment do not constitute a crime. The demurrer was overruled, and the defendant when arraigned, was tried and convicted of misdemeanor, second offense, and was sentenced to pay a fine of $50 and to stand committed until paid, not exceeding fifty days in the Oneida County jail. The appeal from the judgment of conviction brings up for review the order overruling the demurrer.

The indictment follows the language of the statute and the rule is well settled that an indictment for a statutory misdemeanor, which charges the facts constituting the crime in the words of the statute and contains averments as to time, place and person and other circumstances to identify the particular transaction, is good. People *vs.* West (106 N. Y., 293), People *vs.* King (110 N. Y., 422), People *vs.* Welden (111 N. Y., 574).

The learned counsel for the appellant has devoted his argu-
16 ment principally to a discussion of the constitutionality of the act, and he contends that the statute is an unlawful invasion of the liberty of the defendant, because it unnecessarily prohibits him from contracting with others to carry on his business; that it is in violation of article XIV, section 1 of the Constitution of the United States, which provides that no State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, nor deny any person within its jurisdiction the equal protection of the law, and that it is also a violation of the following provisions of article I of the constitution of the State of New York, viz: "No member of this State shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers," and "No person shall be deprived of life, liberty or property without due process of law."

The statute authorizes the employment of men to labor in biscuit,

bread or cake bakeries or confectionery establishments not more than sixty hours in any one week or more than ten hours in any one day. This section of the statute merely declares that ten hours' labor performed within twenty-four hours shall constitute a day's work, and no employé shall be required or permitted to work a greater number of hours for such employer. The constitutionality of this act must be determined by the citizen's right to pursue a lawful employment. If the restriction is arbitrary and does not pertain to the welfare and health of the people, it cannot be upheld.

It has been frequently held that it is only when a case is presented which shows clearly that a statute when fairly and reasonably construed, is brought in conflict with some provision of the Con-
17 stitution, that the court is justified in pronouncing the law invalid, (Cooley Const. Lim., 164); and that the courts cannot inquire whether the legislative enactments are unwise or expedient.

A State in the exercise of its constitutional power may regulate the conduct of its citizens toward each other and when necessary for the public good, the manner in which each shall use his property. Munn *vs.* Ill. (94 U. S., 113), People *vs.* Budd (117 N. Y., 14).

So in the examination of this case, we start with the rule of law well settled that nothing but a clear usurpation of power prohibited by the Constitution will justify the judicial department in pronouncing an act of the legislative department unconstitutional and void.

Sections 111 to 115 of the act in question aim to prescribe the sanitary conditions necessary to be maintained, in order to properly conduct a bakery and to protect the health of the community, and the health of those engaged in business of that nature.

The act provides that: "All buildings or rooms occupied as biscuit, bread, pie or cake bakeries shall be drained and plumbed in a manner conducive to the proper and healthful sanitary condition thereof, and shall be constructed with air shafts, windows or ventilating pipes, sufficient to insure ventilation. The factory inspector may direct the proper drainage, plumbing and ventilation of such rooms or buildings. No cellar or basement, not now used for a bakery shall hereafter be so occupied or used, unless the proprietor shall comply with the sanitary provisions of said act."

It also provides that: "Every room used for the manufacture of flour or meal food products shall be at least eight feet in
18 height and shall have, if deemed necessary by the factory inspector, an impermeable floor constructed of cement, or of tiles laid in cement, or an additional flooring of wood properly saturated with linseed oil. The side walls of such rooms shall be plastered or wainscotted. The factory inspector may require the side walls and ceiling to be whitewashed, at least once in three months. He may also require the wood work of such walls to be painted. The furniture and utensils shall be so arranged as to be readily cleansed and not prevent the proper cleaning of any part of

a room. The manufactured flour or meal food shall be kept in dry and airy rooms so arranged that the floors, shelves and all other facilities for storing the same can be properly cleaned."

"Every such bakery shall be provided with a proper wash-room and water-closet or water-closets apart from the bake-room, or rooms where the manufacture of such food product is conducted, and no water-closet, earth-closet, privy or ash-pit shall be within or connected directly with the bake-room of any bakery, hotel or public bake-room. Sleeping places for the persons employed in the bakery shall be separate from the rooms where flour or meal food products are manufactured or stored. If the sleeping places are on the same floor where such products are manufactured, stored or sold, the factory inspector may inspect and order them put in a proper sanitary condition."

Sub-division three of section 384 of the Penal Code provides: "Any person who violates or does not comply with the provisions of article eight of the labor law, relating to bakeries and confectionery establishments, and employment of labor and the manufacture of flour or meal food products therein,"—"is guilty of a misdemeanor, and upon conviction shall be punished for a first offense by a fine
19 of not less than twenty nor more than one hundred dollars; for a second offense by a fine of not less than fifty nor more than two hundred dollars, or by imprisonment for not more than thirty days, or by both such fine and imprisonment, for a third offense by a fine of not less than two hundred and fifty dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment."

This brings us to the main question in the case, namely: The nature and extent of the police power of the State.

There is little, if anything, to be said other than the courts have already said on this subject.

It was remarked by Judge Gray in People *vs.* Ewer (141 N. Y., 132), "That it is difficult, if not impossible, to define the police power of a State; or, under recent judicial decisions, to say where the constitutional boundaries limiting its exercise are to be fixed."

The police power of the State is the power which enables it to promote the health, comfort, safety and welfare of society. It is very broad and far-reaching, but it is not without its limitations.

The rule seems to be well settled, that when one devotes his property to a use or carries on a business in which the public has an interest, he holds the property and carries on the business subject to the police power of the State to regulate or control its use, so as to protect and preserve the public health, the public morals and the general safety and welfare of the public. Berthelf *vs.* O'Reilly (74 N. Y., 515).

The line between a valid exercise of the police power and the invasion of private rights is clearly drawn by Judge Earl in
20 his opinion in matter of application of Jacobs (98 N. Y., 110). He says: "Generally it is for the legislature to determine what laws and regulations are needed to protect the public health

and secure the public comfort and safety, and while its measures are calculated, intended, convenient and appropriate to accomplish these ends, the exercise of its discretion is not subject to review by the courts. But they must have some relation to these ends. Under the mere guise of police regulations, personal rights and private property cannot be arbitrarily invaded, and the determination of the legislature is not final or conclusive. If it passes an act ostensibly for the public health, and thereby destroys or takes away the property of a citizen, or interferes with his personal liberty, then it is for the courts to scrutinize the act and see whether it really relates to and is convenient and appropriate to promote the public health."

It was remarked by Judge O'Brien in People *vs.* Rosenberg (136 N. Y., 415) that: "If the act and the constitution can be construed so as to enable both to stand, and each can be given a proper and legitimate office to perform, it is the duty of the court to adopt such legislation. The legislature, under the police power, may certainly regulate or even prohibit the carrying on of any business in such manner and in such place as to become dangerous or detrimental to the health, morals or good order of the community."

Judge Vann in discussing the statute entitled An act to regulate barbering on Sunday, People *vs.* Havnor, (149 N. Y., 204), says: "As barbers generally work more hours each day than most men, the legislature may have well concluded that legislation was necessary for the protection of their health." And at page 203, he says: "It is to the interest of the State to have strong, robust, healthy citizens, capable of self support, of bearing arms, and of add-
21 ing to the resources of the country. Laws to effect this purpose, by protecting the citizens from overwork and requiring a general day of rest to restore his strength and preserve his health, have an obvious connection with the public welfare."

It was held in People *ex rel.* Nechamcus *vs.* Warden, etc. (144 N. Y., 536), that: "The restraint of personal action is justified, when it manifestly tends to protection of the health and comfort of the community, and no constitutional guaranty is then violated."

In Health Department *vs.* Rector (145 N. Y., 32), the court laid down the rule that the legislature, in the exercise of its power to conserve the public health, safety and welfare, may direct that certain improvements or alterations shall be made in tenant houses at the owners' expense, and that suitable appliances be supplied to receive and distribute a supply of water for domestic use. Judge Peckham, in discussing the constitutionality of the act (page 43), says: "Laws and regulations of a police nature, though they may disturb the enjoyment of individual rights, are not unconstitutional, though no provision is made for such disturbances. They do not appropriate private property for public use, but simply regulate its use and enjoyment by the owner." Under the police power, persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort and health of the public.

It has been held that the legislature might prohibit railroads from permitting or requiring workmen who have worked twenty-four hours, to go on duty again until they have had eight hours' rest. The same act also provides that ten hours' work out of
22 twelve consecutive hours shall constitute a day's labor. People *vs.* Phyfe (136 N. Y., 554).

The State, under its police power, may require every locomotive engineer to pass an examination before a board of examiners, as to his skill in operating a locomotive engine, and his general competency as an engineer, and also inquire into his character and habits, and to withhold the license if he be found reckless or intemperate. It may also enact that every railroad corporation shall not permit any locomotive engineer in its employ to run a locomotive engine more than ten consecutive hours in any one day. It may provide when a locomotive engineer is found to be in a state of intoxication, that the board be authorized to revoke and cancel his license, and likewise whenever they shall be satisfied of the unfitness of the engineer. Such legislation would be clearly within the scope and power of the legislature to protect the lives of passengers and property.

In Tiedman's Lim. Police Power, 181, the author states: "If the law did not interfere, the feverish, intense desire to acquire wealth—inciting a relentless rivalry and competition, would ultimately prevent, not only the wage-earner, but likewise the capitalists and the employers themselves from yielding to the warnings of nature and obeying the instinct of self-preservation by resting periodically from labor."

The Utah statute, which limited the hours for labor in all underground mines and smelting works, except in cases of emergency, when life and property were in imminent danger, to eight hours, was held to be constitutional by the Utah courts as well as by the Supreme Court of the United States, the latter taking the position that the State had a right to limit the hours for labor to
23 those engaged in dangerous or unhealthy employments. Holden *vs.* Hardy (169 U. S., 361).

Another common form of statutory regulation of the hours of labor, is the provision that workmen on public works shall not be required to work more than a prescribed number of hours each day. Where the regulation is applied to employees of the city, county or State government, who are employed and were paid directly by these respective governments The safety and health of a large body of workmen gathered together in one place, a mine, a factory or workshop, are endangered if proper precautions are not taken by the employer against the source of danger, and everywhere we find the statutes both varied and numerous, which require employers and the owners of buildings, which are used as workshops, and the owners of mines to do certain things which are declared by statute to be necessary for the protection of the workmen. Inspectors are generally appointed to see that suitable regulations are observed. These regu-

lations in the main are all reasonable safe-guards and their constitutionality has been rarely questioned.

Many other cases pertaining to this subject might be cited which confirm the principles we have stated.

If the statute under consideration invades the right of property and the liberty of the individual, then many of the statutes of this State that have been held to be constitutional and their enactment within the police power of the State, are subject to the same criticism.

The statute in question does not restrict the right of the defendant, to carry on his business or to engage as many persons as he sees fit in such business, but it simply prohibits him from requiring or
24 compelling his employees to work more than ten hours in any one day, or more than sixty hours in any one week; in other words, the statute does not prohibit any right, but regulates it, and there is a wide difference between regulation and prohibition, between prescribing the terms by which the right may be enjoyed, and the denial of that right altogether. The defendant is not deprived of any right or privilege, which is not denied to others in a similar business. The provisions of the statute in question are directed to all persons engaged in the bakery business. It neither confers special privileges nor makes unjust discrimination. All who are engaged in that business are entitled to its benefit and subjected to its restrictions. It is open to any citizen to engage in that business, and the privileges conferred belong equally to all.

It is very important for the health of the community, that bakers should supply people with wholesome bread and pure food. The people are interested in the business; it is of so much public interest that the legislature under the police power of the State, may control the business by any regulation which is necessary to secure the public health. The regulations instituted by this statute were for the purpose of protecting the health of the employés, and giving the public pure and wholesome bread and other articles of food sold by bakers.

These establishments are compelled to do baking during the nighttime, in order to supply their customers in the morning. It is necessary for them to have their ovens heated day and night, and their employees are required to work more hours each day than men usually work who are engaged in other kinds of business. When we consider the intense heat of the rooms where baking is done,
25 and the flour that floats in the air and is breathed by those who work in bakeries, there can be but little doubt that prolonged labor day and night, subject to these conditions, might produce a diseased condition of the human system, so that the employees would not be capable of doing their work well and supplying the public with wholesome food.

The legislature no doubt recognized the fact that proprietors of these establishments desire to obtain as much labor as possible from their employees, who from fear of being discharged, are often in-

duced to comply with the employer's request to work during both night and day, and the legislature evidently reached the conclusion that more than ten hours labor each day might be injurious to the health of the employees.

The rule laid down in People *vs.* Havnor (*supra*), shows that the courts are disposed to uphold a statutory regulation enacted for the safety of the public and to protect the health of the individual employee from the dangers threatened by excessive or exhaustive labor.

We are of the opinion that the act is constitutional, that the judgment of conviction is right and should be affirmed.

All concur, except McLennan and Williams, JJ., who dissent.

STATE OF NEW YORK,
Oneida County, Clerk's Office, } ss.:

I, Hermon Clarke, clerk of said county, and of the supreme and county courts therein, the same being courts of record, do hereby certify, that I have applied the annexed copy of appeal book of the case People of the State of New York against Joseph Lochner comprising the following papers, to-wit: statement, indictment, demurrer, order disallowing demurrer, judgment of conviction, &c., certificate of reasonable doubt, notice of appeal stipulation, affidavit of no opinion, order of affirmance on appeal from judgment, judgment, notice of appeal to court of appeals, certificate, opinion, and remittitur and the endorsements thereupon with the original thereof, on file in this office, and that the same is a correct transcript therefom, and of the whole of said original.

In witness whereof, I have hereunto set my hand, and affixed the seal of said county and courts, at the city of Utica, this 27th day of May 1904.

[Seal Oneida County, New York.]

HERMON CLARKE, Clerk.
—— ——, Deputy Clerk.

26 Opinion of Court of Appeals.

PARKER, *Ch. J.*:

Defendant's conviction is under sub-division 3, section 384*l*, Penal Code, which makes a violation of article VIII, chapter 415, Laws 1897, a misdemeanor. The judgment is affirmed by the appellate division.

Defendant urges as ground for a reversal that article VIII—which on its face purports to be, as we shall see later, an exercise of
27 the police power of the State—offends against the first section of the 14th amendment to the United States Constitution. That section provides that "No State shall make or enforce any law

which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." It is also claimed that the statute violates those provisions of the State constitution which declare that "No member of this State shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers" (Const. art. 1, § 1), "nor be deprived of life, liberty or property without due process of law." (Const. art. 1, § 6.)

The first cases in which the 14th amendment is discussed by the United States Supreme Court are the Slaughter House cases (83 U. S. 36), wherein is challenged the Louisiana statute authorizing the removal of noxious slaughter houses from the more densely populated part of New Orleans, and their location where they could least affect the health and comfort of the people, and to that end granting a corporation exclusive right for 25 years to maintain slaughter houses within 3 parishes, containing between 200,000 and 300,000 people, and including New Orleans. This is held to be a police regulation for the health and comfort of the people, and, therefore, within the power of the State legislature, and not affected by the 14th amendment, which the court says is not intended to interfere with the exercise of police power by the States.

In Barbier *v.* Connolly (113 U. S. 27) the Supreme Court has before it a San Francisco ordinance prohibiting work in public laundries within defined territory from 10 p. m. to 6 a. m., claimed to be repugnant to the 14th amendment. The court rules that the ordinance is well within the police power, and in the course of the opinion says: "Neither the amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the State, sometimes termed its police power, to
28 prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develop its resources and add to its wealth and prosperity" (p. 31).

There are many interesting cases in the United States Supreme Court sustaining statutes of different States which in terms seem repugnant to the 14th amendment, but which that court declares to be within the police power of the States. Among them are statutes declaring a railroad company liable for damages to an employee although caused by another employee (127 U. S. 205); fixing the damages at double the value of stock killed, when due to the neglect of a railroad company to maintain fences (129 U. S. 26); requiring locomotive engineers to be licensed, and providing that the railroad company employing them pay the fees of examination (128 U. S. 96); requiring cars to be heated otherwise than by stoves on railroads over 50 miles in length (165 U. S. 628); providing for immediate payment of wages by railroad companies to discharged employees (173 U. S. 404); prohibiting options to sell grain (184 U. S.

425); providing for inspection of mines at expense of owners (185 U. S. 203), and one declaring void all contracts for sales of stocks on margins (187 U. S. 606).

I shall call special attention to but one other case, namely, Holden *v.* Hardy (169 U. S. 366). In that case the court reviews at length many of the cases arising under the 14th amendment, beginning with the Slaughter House cases. The case involves a Utah statute providing that "the period of employment of workingmen in all underground mines or workings shall be eight hours per day, except in cases of emergency where life or property is in imminent danger." Violation is made a misdemeanor. The conviction of one Holden under that statute is affirmed by the United States Supreme Court. It is argued by defendant in that case that the statute has no relation to the health or safety of the public or the persons affected, or if so, only in a very remote degree, while its direct
29 and principal effect is to interfere with the rights and liberties of the contracting parties; that the right to contract contains three essential and indispensable elements, guaranteed and protected by the United States Constitution, namely, "the right of the employer and employee to agree upon (1) the character of the service to be performed, (2) the amount to be paid for such service, and (3) the number of hours per day during which the service is to continue;" that the destruction or abridgment of one element is a destruction or abridgment of the whole of said right to contract; that the statute abridges the "privileges and immunities" in that it deprives the employer and the employee of perfect freedom and liberty to pursue unmolested a lawful vocation in a lawful manner; that the rights of the employer and employee in that direction were unlimited before the adoption of the 14th amendment and that since its adoption it is beyond the power of any State to make any laws abridging or destroying such rights. This latter contention—which if sustained would practically prevent all further development of the police power on the part of the States—is overborne by the court. Many cases passed upon by the court since the adoption of the 14th amendment are cited furnishing illustrations tending to justify the boast of the devotees of the common law, that by the application of established legal principles the law has been, and will continue to be developed from time to time so as to meet the ever-changing conditions of our widely diversified and rapidly developing business interests. The court quotes from Mr. Justice Matthews in Hurtado *v* California (110 U. S. 516, 530): "This flexibility and capacity for growth and adaptation is the peculiar boast and excellence of the common law. * * * The Constitution of the United States was ordained, it is true, by descendants of Englishmen, who inherited the traditions of English law and history; but it was made for an undefined and expanding future, and for a people gathered and to be gathered from many nations and of many tongues. * * * There is nothing in Magna Charta, rightly construed as a broad charter of public right and

law, which ought to exclude the best ideas of all systems and
30 of every age; and as it was the characteristic principle of the common law to draw its inspiration from every fountain of justice, we are not to assume that the sources of its supply have been exhausted. On the contrary, we shall expect that the new and various experiences of our own situation and system will mould and shape it into new and not less useful forms." The court illustrates by forceful examples the necessity of recognizing in legal decisions the change of conditions. After calling attention to the fact that in the early history of the country there was no occasion for any special protection of a particular class, as we were almost purely an agricultural country, it instances coal mining and the manufacture of iron. When these industries began in Pennsylvania as early as 1716 they were carried on in such a limited way, and by such primitive methods, that no special laws were deemed necessary to protect operatives; but since that time they have assumed such vast proportions in that and other States, and developed so many dangers to the safety and life of those engaged in them, that laws to meet such exigencies have become necessary. It calls attention to many protective statutes enacted in many different States providing for fire escapes in hotels, theatres, factories and other large buildings; inspection of boilers; appliances to obviate the dangers incident to railroad and steamboat transportation; the protection of dangerous machinery against accidental contact; the shoring up of ventilation shafts; means for signaling in mines for fresh air; the elimination as far as possible of dangerous gases, and safe means of hoisting and lowering employees in mines. It is said that statutes providing such safeguards "have been repeatedly enforced by the courts of the several States; their validity assumed, and, so far as we are informed, they have been uniformly held to be constitutional" (169 U. S. 366, 394), which, of course, means that the courts of the several States making these decisions hold that such statutes do not deprive citizens of any of the rights or privileges guaranteed by the Constitution, nor de-
31 prive them of property without due process of law, for every State constitution contains such a provision or its equivalent.

Of such illustrations the court further says (p. 387): "They are mentioned only for the purpose of calling attention to the probability that other changes of no less importance may be made in the future, and that while the cardinal principles of justice are immutable, the methods by which justice is administered are subject to constant fluctuation, and that the Constitution of the United States, which is necessarily and to a large extent inflexible and exceedingly difficult of amendment, should not be so construed as to deprive the States of the power to so amend their laws as to make them conform to the wishes of the citizens as they may deem best for the public welfare without bringing them into conflict with the supreme law of the land." This broad-minded view—which is characteristic of the development of the law by this great court since the adoption of the 14th amendment—should, and doubtless will

be followed by the courts of the several States whenever called upon to determine whether statutes offend against the provisions of State constitutions similar or equivalent to the provisions of the 14th amendment. The cases cited, and the reasoning of the court, to which but brief reference is here made, demonstrate that this statute does not offend against the 14th amendment, and it necessarily follows that it is not repugnant to equivalent provisions in our State constitution.

This court throughout all its history has maintained the same position as that taken by the United States Supreme Court. Many authorities could be cited in support of that assertion, but none need be for they are all in one direction.

The impossibility of setting the bounds of the police power has up to this time prevented any court from attempting it, and the reason for it is well stated by Judge Gray in People *v.* Ewer (141 N. Y., 129, 132). He says: "It is difficult, if not impossible, to define the police power of a State; or, under recent judicial decisions, to say where the constitutional boundaries limiting its exercise are to be fixed. It is a power essential to be conceded to the State in the interest and for the welfare of its citizens. We may say
32 of it that when its operation is in the direction of so regulating the use of private property, or of so restraining personal action, as manifestly to secure, or to tend to the comfort, prosperity, or protection of the community, no constitutional guaranty is violated, and the legislative authority is not transcended." In that case the constitutionality of section 292, Penal Code, is questioned. That section makes it a misdemeanor to exhibit as a dancer a female child under 14 years of age. The court denies that the statute violates our constitution because it deprives the mother, the person arrested, of the rights and privileges secured to her by the constitution.

In People *ex rel.* Nechamcus *v.* Warden, etc. (144 N. Y. 529) the constitutionality of chapter 602, Laws 1892, is challenged. The act provides for examination and registration of master plumbers, and makes it a misdemeanor for any person to engage in that trade without such registration. This court holds the statute to be within the police power of the legislature, and, therefore, not repugnant to the constitution. Judge Gray says in the opinion (p. 535): "There has been much discussion upon the subject of what is a valid exercise of the police power of the State through legislative enactment and there is little to be added to what this and other courts have said. The police power extends to the protection of persons and of property within the State. In order to secure that protection, they may be subjected to restraints and burdens by legislative acts. If the act is a valid and reasonable exercise of the police power of the State, then it must be submitted to, as a measure designed for the protection of the public and to secure it against some danger, *real or anticipated*, from a state of things which modifications in our social or commercial life have brought about. The natural right

to life, liberty and the pursuit of happiness is not an absolute right. It must yield whenever the concession is demanded by the welfare, health or prosperity of the State. The individual must sacrifice his particular interest or desires if the sacrifice is a necessary one in order that organized society as a whole shall be benefited. That is a fundamental condition of the State, and which, in the end,
33 accomplishes by reaction a general good, from which the individual must also benefit."

In Health Department *v.* Rector, etc. (145 N. Y. 32) the court considers a provision of the New York consolidation act requiring that tenement houses already erected shall be furnished by the owners with water, "whenever they shall be directed so to do by the board of health," "in sufficient quantity at one or more places on each floor, occupied or intended to be occupied by one or more families." The health department served a notice requiring defendant to supply water, as commanded by the statute, in buildings owned by it. Defendant refused to do so, and an action was brought by the health department to compel compliance. Defendant contends in that case that the statute violates that provision of the State constitution which declares that no member of this State shall "be deprived of life, liberty or property without due process of law." This court holds that the statute does not offend against the constitution, but that it is a valid exercise of the police power; that the legislature, by virtue of that power, can direct that improvements or alterations shall be made in existing houses at the owners' expense when it clearly appears that it tends in some plain and appreciable manner to guard and protect the public; and that a compensation need not be made to the owner in such case, the effect of the act being not to appropriate private property, but simply to regulate its use and enjoyment by the owner. Judge Peckham, writing the opinion of the court, says (p. 43): "Laws and regulations of a police nature, though they may disturb the enjoyment of individual rights, are not unconstitutional, though no provision is made for compensation for such disturbances. They do not appropriate private property for public use, but simply regulate its use and enjoyment by the owner."

People *v.* Havnor (149 N. Y. 195) is a case as near the border line perhaps as any to be found in this State—certainly very much nearer to it than the case under consideration. It exhaustively considers the authorities in this State bearing upon the police power. The case involves the consti-
34 tutionality of what is known as the Sunday barber law, which makes it a misdemeanor for any person to carry on the business or work of a barber on the first day of the week except in the city of New York and the village of Saratoga, where such business or work may be carried on until one o'clock in the afternoon of that day. The statute is held to be constitutional, because a valid exercise of the police power. The opinion is written by Judge Vann. After a careful examination of the authorities he presents the under-

lying question in this way (p. 201): "The vital question, therefore, is whether the real purpose of the statute under consideration has a reasonable connection with the public health, welfare or safety." After stating that the object of the act is to require the observance of Sunday, not as a holy day, but as a day of rest and recreation, he proceeds—with argument buttressed by authority in this State and in other jurisdictions—to answer the question in the affirmative. In the course of the argument he says (p. 203): "According to the common judgment of civilized men, public economy requires, for sanitary reasons, a day of general rest from labor, and the day naturally selected is that regarded as sacred by the greatest number of the citizens, as this causes the least inconvenience through interference with business. It is to the interest of the State to have strong, robust, healthy citizens, capable of self-support, of bearing arms, and of adding to the resources of the country. Laws to effect this purpose, by protecting the citizen from overwork and requiring a general day of rest to restore his strength and preserve his health, have an obvious connection with the public welfare. * * * The statute under discussion tends to effect this result, because it requires persons engaged in a kind of business that takes many hours each day, to refrain from carrying it on during one day in seven. This affords an opportunity, recurring at regular intervals, for rest, needed both by the employer and the employed, and the latter, at least, may not have the power to observe a day of rest without the aid of legislation. * * * As barbers generally work more hours each day than most men, the legislature may well have concluded that legislation was necessary for the protection of their health."

The pertinency and controlling force of that argument to the question under consideration here will be manifest when we come to an examination of the statute.

No authorities can be found in this court which conflict with the cases to which I have called attention. Rodgers' case (166 N. Y. 1) is cited in opposition, but why I cannot see. The police power is not even considered in that case. The defense to that portion of the statute which is condemned as unconstitutional because it requires a stipulation in all contracts with the State and municipalities that the contractor shall "pay the prevailing rate of wages at least," being rested on the ground (1) that the State as proprietor can do what an individual proprietor can do, namely, insist upon any reasonable provision in a contract as a condition for doing the work; (2) that the State is proprietor not only as to contracts for work for the benefit of the entire State, but also as to contracts for work authorized by it for the various subdivisions of the State made for convenience of administration; (3) that hence it violates no provision of the constitution.

Having shown by an examination of a few of the leading authorities relating to the police power that the decisions of this court are in harmony with those of the United States Supreme Court, and

having specially brought out some of the argument in those decisions for the purpose of presenting something of the vast scope of that power, we come next to the question, In what spirit should the court approach the consideration of a statute said on the one hand to offend against the constitution, and on the other to be a proper exercise of the police power?

The courts are frequently confronted with the temptation to substitute their judgment for that of the legislature. A given statute, though plainly within the legislative power, seems so repugnant to a sound public policy as to strongly tempt the court to set aside the statute, instead of waiting, as the spirit of our institutions require, until the people can compel their representatives to repeal the obnoxious statute.

36 In the early history of this country eminent writers gave expression to the fear that the power of the courts to set aside the enactments of the representatives chosen to legislate for the people would in the end prove a weak point in our governmental system, because of the difficulty of keeping the exercise of such great power within its legitimate bounds. So far in our judicial history it must be said that the courts have in the main been conservative in passing upon legislation attacked as unconstitutional, but occasionally, and especially when a case is one on the border line, it is quite possible that the judgment of the court that the legislation is unwise may operate to carry the decision to the wrong side of that border line. Certain it is that the courts have greatly extended their jurisdiction over many administrative acts that were originally supposed not to present cases for the court to pass upon, and in that way the courts have come to play a very important part in State and municipal administration. Some expression of our views on that subject is given in Matter of Guden (171 N. Y. 529, 535).

Now when considering the mental attitude with which the court should begin an examination of this question, it is well to have in mind not only the great breadth and scope of the police power, and the legislative control over it as expressed in some of the opinions from which we quote *supra*, but it is also well to have in mind some of the expressions of this court as to the way in which the court should approach the consideration of such a question as this, involving the constitutionality of a statute.

Judge Andrews says, in People *v.* King (110 N. Y. 418, 423): "By means of this power the legislature exercises a supervision over matters affecting the common weal. * * * It may be exerted whenever necessary to secure the peace, good order, health, morals and general welfare of the community, and *the propriety of its exercise within constitutional limits is purely a matter of legislative discretion with which courts cannot interfere.*"

37 Judge Gray says, in Nechamcus' case (*supra*): "The courts should always assume that the legislature intended by its enactments to promote those ends [public health, comfort and safety], and if the act admits of two constructions, that should be given to

it which sustains it and makes it applicable in furtherance of the public interests." (144 N. Y. 529, 536.)

"Whether the legislation is wise is not for us to consider. The motives actuating and the inducements held out to the legislature are not the subject of inquiry by the courts, which are bound to assume that the law making body acted with a desire to promote the public good. Its enactments must stand, provided always that they do not contravene the constitution, and the test of constitutionality is always one of power—nothing else. But in applying the test the courts must bear in mind that it is their duty to give the force of law to an act of the legislature whenever it can be fairly so construed and applied as to avoid conflict with the constitution." (Bohmer *v.* Haffen, 161 N. Y. 390, 399.)

Where there "is room for two constructions, both equally obvious and reasonable, the court must, in deference to the legislature of the State, assume that it did not overlook the provisions of the constitution, and designed the act * * * to take effect. Our duty, therefore, is to adopt the construction which, without doing violence to the fair meaning of the words used, brings the statute into harmony with the provisions of the constitution." (Supervisors *v.* Brodger, 112 U. S. 261, 268; People *ex rel.* Burrows *v.* Supervisors of Orange Co., 17 N. Y. 236, 241; People *ex rel.* Bolton *v.* Albertson, 55 N. Y. 50, 54; Matter of Gilbert El. Ry. Co., 70 N. Y. 361, 367 Matter of N. Y. & L. I. Bridge Co. *v.* Smith, 148 N. Y. 540, 551.)

The court is inclined to so construe the statute as to validate it. (People *v.* Equitable Trust Co., 96 N. Y. 387, 394; People *ex rel.* Sinkler *v.* Terry, 108 N. Y. 1, 7; Matter of N. Y. El. R. R. Co., 70 N. Y. 327, 342; People *ex rel.* Killeen *v.* Angle, 109 N. Y. 38 564, 567; Rogers *v.* Common Council of Buffalo, 123 N. Y 173, 181; People *ex rel.* Carter *v.* Rice, 135 N. Y. 473, 484.)

"Every act of the legislature must be presumed to be in harmony with the fundamental law until the contrary is clearly made to appear." (People *ex rel.* Kemmler *v.* Durston, 119 N. Y. 569, 577.)

"Before an act of the legislature can be declared void as repugnant to the constitution, the conflict must be manifest." (Matter of Stilwell, 139 N. Y. 337, 341.)

"If the act and the constitution can be so construed as to enable both to stand, and each can be given a proper and legitimate office to perform, it is the duty of the court to adopt such construction." (People *v.* Rosenberg, 138 N. Y. 410, 415.)

The statute under consideration in that case is held to be within the police power, as is the statute considered in the following case.

"It is not necessary to the validity of a penal statute that the legislature should declare on the face of the statute the policy or purpose for which it was enacted." (People *v.* West, 106 N. Y. 293, 297.)

Having considered the authorities bearing upon the subject of the exercise of police power at greater length than could be justified were it not for the different view that obtains in this court as to the authority of the legislature to pass the statute in question, and

having glanced at a few authorities indicating the frame of mind in which the court should approach the consideration of the question of the constitutionality of an act of the legislature—we come to the consideration of the statute in question, aided by the principles established by the United States Supreme Court and the courts of this State, to which reference has been made.

I quote the whole statute, notwithstanding its length, in order that it may be at once determined upon its mere reading whether the purpose of the legislature was to subserve, in some measure, the public good under the police power of the State.

39 "ARTICLE VIII.

"BAKERIES AND CONFECTIONERY ESTABLISHMENTS.

"§ 110. *Hours of labor in bakeries and confectionery establishments.*—No employee shall be required or permitted to work in a biscuit, bread or cake bakery or confectionery establishment more than sixty hours in any one week, or more than ten hours in any one day unless for the purpose of making a shorter work day on the last day of the week; nor more hours in any one week than will make an average of ten hours per day for the number of days during such week in which such employee shall work.

"§ 111. *Drainage and plumbing of buildings and rooms occupied by bakeries.*—All buildings or rooms occupied as biscuit, bread, pie or cake bakeries, shall be drained and plumbed in a manner conducive to the proper and healthful sanitary condition thereof, and shall be constructed with air shafts, windows or ventilating pipes, sufficient to insure ventilation. The factory inspector may direct the proper drainage, plumbing and ventilation of such rooms or buildings. No cellar or basement, not now used for a bakery shall hereafter be so occupied or used, unless the proprietor shall comply with the sanitary provisions of this article.

"§ 112. *Requirements as to rooms, furniture, utensils and manufactured products.*—Every room used for the manufacture of flour or meal food products shall be at least eight feet in height and shall have, if deemed necessary by the factory inspector, an impermeable floor constructed of cement, or of tiles laid in cement, or an additional flooring of wood properly saturated with linseed oil. The side walls of such rooms shall be plastered or wainscoted. The factory inspector may require the side walls and ceiling to be whitewashed, at least once in three months. He may also require the wood work of such walls to be painted. The furniture and utensils shall be so arranged as to be readily cleansed and not prevent the proper cleaning of any part of the room. The manufactured flour or meal food products shall be kept in dry and airy rooms so arranged that
40 the floors, shelves and other facilities for storing the same can be properly cleaned. No domestic animals, except cats, shall

be allowed to remain in a room used as a biscuit, bread, pie or cake bakery or any room in such bakery where flour or meal products are stored.

"§ 113. *Wash rooms and closets; sleeping places.*—Every such bakery shall be provided with a proper wash-room and water-closet or water-closets apart from the bake-room, or rooms where the manufacture of such food product is conducted, and no water-closet, earth-closet, privy or ashpit shall be within or connected directly with the bake-room of any bakery, hotel or public restaurant.

"No person shall sleep in a room occupied as a bake-room. Sleeping places for the persons employed in the bakery shall be separate from the rooms where flour or meal food products are manufactured or stored. If the sleeping places are on the *the* same floor where such products are manufactured, stored or sold, the factory inspector may inspect and order them put in a proper sanitary condition.

"§ 114. *Inspection of bakeries.*—The factory inspector shall cause all bakeries to be inspected. If it be found upon such inspection that the bakeries so inspected are constructed and conducted in compliance with the provisions of this chapter, the factory inspector shall issue a certificate to the persons owning or conducting such bakeries.

"§ 115. *Notice requiring alterations.*—If, in the opinion of the factory inspector, alterations are required in or upon premises occupied and used as bakeries, in order to comply with the provisions of this article, a written notice shall be served by him upon the owner, agent or lessee of such premises, either personally or by mail, requiring such alterations to be made within sixty days after such service, and such alterations shall be made accordingly."

That the public generally are interested in having bakers' and confectioners' establishments cleanly and wholesome in this day of appreciation of, and apprehension on account of, microbes, which cause disease and death, is beyond question. Not many years
41 ago the baking was largely done in the family; but now in a large percentage of the houses in cities and villages the baker is relied on to a large extent to furnish bread, biscuits, cake and pie, as well as confectionery, while over many country roads the bakers' wagons go twice a week or more to supply the farmers and inhabitants of small settlements with their wares. Indeed it can be safely said that the family of to-day is more dependent upon the baker for the necessaries of life than upon any other source of supply. That being so it is within the police power of the legislature to so regulate the conduct of that business as to best promote and protect the health of the people. And to that end the legislature undertakes to provide—by a statute which bears on its face evidence of an intelligent draftsman acquainted with the dangers of unsanitary conditions in such establishments—for proper drainage and plumbing of the building and rooms occupied for such purpose.

Is there room to doubt that the sole purpose of the legislature in prohibiting the use of cellars for bakeries unless the occupant first complies with the sanitary provisions of this article is to protect the public from the use of the food made dangerous by the germs that thrive in darkness and uncleanness? Is it possible that any one can question that the sole purpose of the legislature is the safeguarding of the public health when it provides for floors, ceilings and sidewalls of such material as that they may be readily cleansed; compels the keeping of flour or meal food products in dry and airy rooms, so arranged that the storing facilities can be properly cleaned, and prohibits the keeping of domestic animals within such rooms? And will any one question the motive which induced the prohibition of a "water-closet, earth-closet, privy or asphit * * * within or connected directly with the bake-room of any bakery, hotel or public restaurant"? If not, why should any one question the object of the legislature in providing in the same article and as a part of the scheme that "no employee shall be required or permitted to work" in such an establishment "more than sixty hours in any one week," an average of ten hours for each working day. It is
42 but reasonable to assume from this statute as a whole that the legislature had in mind that the health and cleanliness of the workers, as well as the cleanliness of the work-rooms, was of the utmost importance, and that a man is more likely to be careful and cleanly when well, and not overworked, than when exhausted by fatigue, which makes for careless and slovenly habits, and tends to dirt and disease.

If there is opportunity—and who can doubt it—for this view, then the legislature had the power to enact as it did, and the courts are bound to sustain its action as justified by the police power, as we see from the authorities referred to earlier in this opinion.

I hear but one argument advanced for the purpose of convincing the mind that the object of this statute is not to protect the public, and that argument is that article VIII is to be found in the labor law. Therefore, it is said it is a labor law, not a health law.

The question presented by that argument is, Does the label or the body of the statute prevail? Does calling a statute names deprive it of its intended and real character? If a statute relating principally to banking happens, in the course of codification, to be incorporated as an article in the general corporation law, does it cease to operate on the banking business? I submit without argument that the questions answer themselves.

Assuming, however, for the purpose of argument only, that the label is of such substantial importance that it may be accepted as against the obvious meaning of the statute, then I say that article VIII bears its own title, which is: "Bakeries and confectionery establishments." All that is contained in that article relates to bakeries and confectionery establishments and their conduct, and to no other subject whatever. Therefore, it is fully, appropriately and harmoniously entitled.

Again, inasmuch as it is obvious, as we have seen, from a mere reading of the statute, that the legislative purpose is to benefit the public, we must assume—even if the object of the legislature
43 in limiting the hours of work of employees is not to protect the health of the general public, who takes the wares made by such employees—that the legislature intends to protect the health of the employees in such establishments; that, for some reason sufficient to it, it has reached the conclusion that in work of this character men ought not to be employed more than an average of ten hours a day. Now that being so—and certainly no more restricted view of that statute can be taken by those who would destroy it—we find that the action of the legislature is within the police power not only under the authorities of the United States, but of this State, and of this court.

Special attention has already been called to Holden's case (169 U. S. 366). A Utah statute making it a misdemeanor to employ a man more than 8 hours per day in "underground mines or workings" is sustained, and a conviction thereunder upheld, by the United States Supreme Court, on the ground that it is within the police power of the State to pass such a statute. That interesting case—to which I have made extended reference *supra*—is in point and controlling so far as the 14th amendment is concerned, and should be controlling in this court so far as equivalent provisions of our State constitution are concerned.

It must also be held, under the authority of Havnor's case (*supra*) —even though it may be assumed from the reading of the statute that the object of the legislature is to protect employees in such establishments from working more than ten hours a day—that it is within the police power, and, therefore, not repugnant to the State constitution. The statute which that case passes upon makes it a misdemeanor to carry on the business of a barber on the first day of the week, and a judgment of conviction under that law is affirmed in this court because "The statute under consideration has a reasonable connection with the public health, welfare or safety." Certainly if this court could so hold in that case it must so hold in this, even under the construction of the statute which those would give to it who are affected by the fact that article VIII, chapter 32, General Laws, is grouped with 12 other articles, the compilation being known as the labor law, instead of being in the
44 domestic law, with articles entitled, Flour and meal, Beef and pork, or in the public health law with articles such as Adulteration, Practice of medicine or the like.

Again many medical authorities classify workers in bakers' or confectioners' establishments with potters, stone cutters, file grinders and other workers whose occupation necessitates the inhalation of dust particles, and hence predisposes its members to consumption. The published medical opinions and vital statistics bearing upon that subject *standing alone* fully justify the section under review as one to protect the health of the employees in such establishments,

and it is the duty of this court to assume that the section was framed not only in the light of, but also with full appreciation of the force of the medical *authority* bearing upon the subject—authority which reasonably challenges the attention, and stimulates the helpfulness of the philanthropist.

The conclusion necessarily follows, therefore, from an examination of the statute in the light of the authorities cited, that the purpose of article VIII, and every part of it, including the provision in question, is to benefit the public; that it has a just and reasonable relation to the public welfare, and hence is within the police power possessed by the legislature. But if, in violation of the duty of the court as stated in Brodger's case (*supra*)—which is "to adopt the construction which, without doing violence to the fair meaning of the words used, brings the statute into harmony with the provisions of the Constitution"—we award to the title of a general law such potency as causes it to overcome both the title and the provisions of an article therein, thus making the provision a labor law, we are still required to hold that it is within the police power.

The judgment should be affirmed.

GRAY, *J.*:

I shall concur with the chief judge; whose opinion I regard as carefully expressed and convincing in its reasoning. The
45 question for us is, in the first place, whether, notwithstanding its embodiment in the labor law, we may treat the statutory provision, in question, as a health law and, in the next place, if we may do so, whether its enactment is a reasonable exercise of the police power of the State, which the courts should give effect to. I am of the opinion that its being placed in the labor law furnishes no adequate reason for limiting its reading and construction by those considerations, which appertain to laws passed, strictly, in the interest of labor; if, from its association with other provisions, in *pari materia*, a different and independent purpose is disclosed. To deprive a health law of its intended operation, because it is not found in the statute book under that, or a kindred, title, would be, in my opinion, to apply an unreasonable and an unsatisfactory test of its validity. If the court concludes that the intent of an enactment in some valid exercise of the police power is to regulate some particular trade, or occupation, then, clearly, it should be quite immaterial under what heading it appears to be classified in the statutes. It would not do to nullify the will of the people upon so technical and narrow a consideration. Therefore, I think we may proceed, beyond that ground, to the determination of the question whether, if a health law, the 110th section of this article VIII was reasonable and, therefore, a valid exercise of the police power. If it stood alone, unaccompanied and unexplained by cognate provisions, I should incline to the view that the enactment was unconstitutional. It might, justly, be held to fall within that class of legislation, which has received judicial condemnation; because, as a reg-

ulation of the hours of the employed, its object would appear to be for their protection against the exaction of a disproportionate amount of work for the wages paid. That would be to infringe upon the liberty of contract. But I think we must read the section in connection with those sections which immediately follow, and then it is that we find it to be made certain that the object of the legislative enactment had relation to the conservation of the public health. We perceive that the legislature is dealing with the workings
of a business conducted upon a scale, calling for the employ-
46 ment of more or less laborers, and which is affected by a
public interest, in the sense that the food product may, sensibly depend for its healthfulness upon the observance of sanitary rules and precautions. Such precautionary regulations may involve, as well, the establishment of proper conditions to insure the maintenance of the normal vitality of the workman, as the wholesomeness of the general environment. We must presume that the legislative body was animated by a reasonable intention to promote the public welfare and if the courts can give effect to it, because tending to guard the public health, they should, unhesitatingly, do so. Legislation will not be allowed, arbitrarily, to interfere with the personal liberty of the citizen, under the specious guise of an exercise of the police power, and therefore it is, that our courts may supervise, as a judicial question, a determination of the legislature to exercise the police power in restraint of some trade, or calling. It is true that the tendency has been growing in the direction of an excess of paternalism in government and that the courts of this and of other States have, rather, hastened to uphold legislative interference with the pursuits of citizens, upon any plausible pretext of its being in furtherance of the general welfare. The Federal Supreme Court has, in the broadest terms, recognized the power of the individual States to exercise a police power of internal regulation; when the object is to promote by reasonable laws the public safety, health and comfort. To the legislative body is conceded the power to govern men and the affairs of men, through the establishment of such rules and regulations as may be conducive to the public betterment, because tending to the protection of the lives, health and comfort of persons and the protection of property, and that concession has been, in my opinion, at times, more broadly made in the decisions of the courts, than the conservative spirit of our democratic form of government will justify. But that the legislature has, and should have, the broadest authority to exercise a police power of internal regulation, in the direction of protect-
47 ing the peace, the safety and the health of the community I
fully concede. In this law, which restricts the working hours of employés in bakery and confectionery establishments, I think we may, fairly, perceive a statutory regulation, reasonably promotive of the public health, because compelling the master of such an establishment to conduct it in a manner, the least capable of affecting his product prejudicially. We may, not unreasonably, assume that an

employé may work too long for his health under the conditions, and that an impaired vitality and the possible development of organic diseases may be the result. If, to obviate the possible consequences to the consumer of the food manufactured, the legislature determines to interfere, by limiting, among other regulations, the hours of the workman, I do not think we should hold the interference to be without reason.

VANN, *J.*:

I concur in the result reached by the chief judge, for the following reasons:

The power of the legislature to pass what it may consider "health laws" is not unlimited, but is bounded by the duty of the courts to determine whether the act has a fair, just and reasonable relation to the general welfare. (Matter of Jacobs, 98 N. Y. 98, 108; People *v.* Gillson, 109 N. Y. 389, 401; People *v.* Havnor, 149 N. Y. 195, 200.) As was said by the court in the Gillson case: "Under an exercise of the police power the enactment must have some relation to the comfort, the safety, or the welfare of society, and it must not be in conflict with the constitution. The law will not allow the rights of property to be invaded under the guise of a police regulation for the protection of health, when it is manifest that such is not the object and purpose of the regulation. * * * It is generally for the legislature to determine what laws and regulations are needed to protect the public health and serve the public comfort and safety and if its measures are calculated, intended, convenient or appropriate to accomplish such ends, the exercise of its discretion is not the subject of judicial review."

We have before us simply that part of the labor law which
48 regulates the hours of labor in bakeries and confectionery establishments by limiting them to not exceeding sixty per week and ten per day, "unless for the purpose of making a shorter work day on the last day of the week."

The draftsman of this statute apparently used as a model "The bakehouse regulation act" passed by the English Parliament in 1863, but he went far beyond that pattern in limiting the hours of labor, for the New York statute applies to all employees in bakeries, while the English act makes no regulation of hours per day or week, but simply prohibits the employment of persons under eighteen years of age between nine at night and five in the morning. (26–27 Victoria, cap. 40.) Both acts contain similar provisions to secure cleanliness and ventilation of the rooms used to carry on the business as well as the separation of sleeping apartments therefrom, none of which are now called in question.

I do not think the regulation in question can be sustained, unless we are able to say from common knowledge that working in a bakery and candy factory is an unhealthy employment. If such an occupation is unhealthy the legislature had the right to prohibit employers from requiring or permitting their employees to spend more

than a specified number of hours per day or week in the work, because such a command would be in the interest of the public health and would promote the general welfare. As in the Jacobs case we took judicial notice of the nature and qualities of tobacco (p. 113), so in this case we may take judicial notice of the effect of very fine particles of flour and sugar when inhaled into the lungs from the heated atmosphere of manufactories of bread and candy. Necessarily in considering the subject we may resort to such sources of information as were open to the legislature.

Vital statistics show that those vocations which require persons to remain for long periods of time in a confined and heated atmosphere filled with some foreign substance, which is inhaled into the lungs, are injurious to health and tend to shorten life. Bakers and confectioners, who, during working hours, constantly breathe air filled with the finest dust from flour and sugar, have a tendency to
49 consumption, the most terrible scourge known to modern civilization and resulting in more deaths than any other disease. (1 People's Cyc. 479; Mulhall's Dict. Statistics, 193 and 683.)

Thus in the article on phthisis in volume 18 of the last edition of the Encyclopædia Britannica it is said: "Occupations which necessitate the inhalation of irritating particles, as in the case of stone masons, needle grinders, workers in minerals, in cotton, flour, straw, &c., are especially hurtful, chiefly from the mechanical effects upon the delicate pulmonary tissues of the matter inhaled. No less prejudicial are occupations carried on in a heated and close atmosphere, as is often the case with compositors, goldbeaters, semp-tresses, etc."

So in Alden's Encyclopædia, vol. 9, title Consumption, the following occurs: "Often the workshops of tailors, printers, bakers and other businesses carried on in close, ill-ventilated apartments by large numbers of working people are nurseries of consumption."

We quote from a few more out of many authorities to the same effect. "It is certain that much might be done to improve the public health in this respect by more attention on the part of employers of labor to the comfort and habits of those who are, in more senses than one, their 'hands' and the sources of their prosperity. A certain kind of improvement has, indeed, been already effected by the improved living of the working classes during the last twenty years. Still it is well known and proved by careful inquiries that the workshops of tailors, printers, bakers and other businesses carried on in close, ill-ventilated apartments, by large numbers of workmen are, in a very aggravated sense, nurseries of consumption. * * * The cutters and needle-grinders of Sheffield appear to owe their notoriously short lives to consumption brought on by the inhalation of metallic particles in the close and stifling atmosphere of their workshops. * * * Even admitting, therefore, that the causes of consumption may be in part practically irremovable, there seems no reason to doubt that very much might be done to dimin-
50 ish its prevalence, as well as to arrest its course when already formed, by due attention to the comfort of the laboring popu-

lation, both in their dwellings and in the pursuit of their occupations." (4 International Cyclopædia, 286.)

"Particular occupations predispose (to consumption), especially such as occasion constant inhalation of small particles." (2 Johnson Cyclopædia, 488.)

"Thus tailors, seamstresses and similar workers are especially prone to the disease. More especially is this true of occupations whose performance necessitates the inhalation of dust particles. * * * The dust particles act as irritants of the fine structures which line the air passages and vessels, inducing chronic changes, which, in turn, are liable to lead to consumption." (3 Chambers Encyclopædia, 438.)

"The bacillus of tuberculosis finds, indeed, the most favorable conditions for its existence in the squalor of congested slums, in the foul atmosphere of dusty workshops, in close courts, alleys, etc." (70 Fortnightly Review, 308.)

"A very large number of the most efficient workmen employed in quarries, metal works, cotton and wool manufactories, print trades and many other occupations exposing them to bad air and dust fall victims to this infection." (194 Edinburgh Review, 444.)

"Since statistics still show that the mortality from phthisis in people who follow certain trades is much greater than in others, there can be no doubt of the casual relationship between occupation and pulmonary disease and of dust being the *causa causans*. * * * In 1866 it was demonstrated that * * * two kinds of occupation had long been recognized as hurtful, viz.: 1, those that give rise to mechanical or chemical irritation of the air passages by dust, grit or fluff being diffused through the atmosphere; 2, those in which the operatives are exposed to abrupt changes of temperature." (The Lancet, vol. 165, p. 1345.)

"Living in a close atmosphere and in a high temperature, bakers are subject to lung diseases, more especially phthisis." (5 Reference Handbook of Medical Science, 276.)

51 "Those engaged in carding of cotton and workers in flax, hemp, tobacco and flour, and chaff cutters suffer in the same manner, but to a less degree than such as are compelled to inhale more decidedly irritating particles." (Fowler & Godlee's Diseases of the Lungs, 272.)

"Dusty occupations, as in the case of millers, bakers, knife-grinders, stone-masons, and the like, are fraught with special dangers to vulnerable persons." (5 Allbutt's System of Medicine, 229.)

"The inhalation of impure air in occupations associated with a very dusty atmosphere renders the lungs less capable of resisting infection." (Osler's Practice of Medicine, 269.)

"Dusty occupations make people prone to disease. The statistics of Berlin as to street-cleaners, cabmen, coal workers and miners show this." (35 Journal Am. Med. Assn. 1028.) "The question as to what business had best be carried on by tuberculosis patients is treated of by Ambler. * * * The butchers, he thinks, generally

possess an immunity, at least that has been his experience, but bakers are particularly susceptible." (37 *id.* 1068.)

"Other vegetable dusts of less potency, which are little less injurious in results than mineral dusts, are flour and starch, which seem to operate rather by obstruction than by irritation. Bakers, confectioners and pastry cooks represent a body of tradesmen exhibiting hygienic conditions of a common character, the principal of which are exposure to heat from the ovens, dust, steam, variations of temperature, in too many instances unhealthy bakehouses, fatiguing movements necessitated where kneading is done by hand, disagreeable emanations from materials used, prolonged hours of work, more or less night work, and loss of rest. To these evils of their trade the working bakers often add intemperance and irregular living. My own senses also make me conscious of a disagreeable, sickly smell much like that of heated bones, superadded to the steam and other fumes. There are, in brief, many incidents in the occupation of baking which reduce vital energy, predispose
52 to lung affections and shorten life." (Arlige Diseases of Occupations, 255.)

The occupations of ropemakers, carpetmakers, bakers, etc., "being essentially dust-producing processes, they one and all induce among workers excessive suffering from pulmonary affections. Although the mortality of these workers from phthisis and other lung diseases is considerably below that of metal workers, nevertheless it is in every case inordinately high, exceeding the mortality of agriculturists by proportions varying from 77 to 120 per cent." (Latham's Register-General's Report, 148.)

According to the data presented by Dr. C. Moeller in his work on Hygiene of the Baker Industry (p. 295): "of bakers dying between the ages of 45 and 65, twenty-five per cent. died from chronic bronchitis or related diseases." He points out "the persistency of the flour dust and starchy particles in the bronchial tubes, and even in the lungs" by quoting a medical authority to the effect "that even two and a half weeks after leaving the employment, starchy particles and other evidences of flour dust had been found in the expectoration of bakers examined."

According to the tables of comparative mortality in the Federal census of 1900, the number of deaths among bakers and confectioners was three and two-tenths per cent. greater than the average of general industrial occupations. These tables are somewhat favorable to bakers between the ages of 15 and 44, but are unfavorable to them between the ages of 45 and over, the average being as stated above. (See, also, 1 Parke's Manual of Practical Hygiene, 133; 62 Medical Record, 334; Medical Examiner and Practitioner, Nov. 1902, tit. Occupations; *id.* July, 1901, tit. Occupation as affecting the death rate.)

The heaviest death rate in England falls to cabdrivers, painters, printers, tailors and bakers. (Mulhall's Dictionary of Statistics, 195.) Statistics relating to thirty-nine trades in England and

Wales show that more bakers have consumption than the
53 average of those engaged in other vocations, and the table of male mortality in Paris shows higher death rate among bakers than in all but five out of twenty of the common callings of life. (*Id.* 688.)

While the mortality among those who breathe air filled with minute particles of flour is less than among those who work in stone, metal or clay, still it seems to be demonstrated that it is greater than in avocations generally. The dust-laden air in a baker's or confectioner's establishment is more benign and less liable to irritate than particles of stone or metal, hence, while bakers are classified with potters, stone masons, file grinders, etc., still they are regarded as less liable to pulmonary disease than other members of the class. The evidence while not uniform leads to the conclusion that the occupation of a baker or confectioner is unhealthy and tends to result in diseases of the respiratory organs. As statutes are valid which provide that women or children shall not be employed in any manufacturing establishment more than a certain number of hours in a single day, so I think an act is valid which provides that in an employment which the legislature deems, and which is in fact, to some extent detrimental to health, no person, regardless of age or sex, shall be permitted or required to labor more than a certain number of hours per day or week. Such legislation, under such circumstances, is a health law and is a valid exercise of the police power.

I vote for affirmance.

O'BRIEN, *J.* (dissenting):

The defendant was convicted of a misdemeanor under one of the subdivisions of section 384 of the Penal Code, in that he violated article eight, section 110, chapter 415 of the Laws of 1897, known as the labor law. The indictment charges that on the twenty-first day of December, 1899, he was arrested upon the complaint of one of his employees for violating the law in *permitting* the employee to work in a bakery more than sixty hours in one week; that he was convicted in the city court and fined twenty dollars, or in default thereof stand committed to the county jail for twenty days, and that he paid the fine; that after such conviction the defend-
54 ant "wrongfully, unlawfully and knowingly, with intent on his part to violate the law, *permitted and required*" another employee named to work more than sixty hours in one week during the week commencing April 19th and ending April 26th, 1901, in the defendant's biscuit, bread and cake bakery and confectionery establishment, thereby committing a misdemeanor as a second offense, contrary to the form of the statute in such case made and provided and against the peace of the people of the State of New York and their dignity.

The defendant demurred to the indictment on two grounds: (1) That more than one crime was charged; and (2) that the facts

stated do not constitute a crime. The local court overruled the demurrer, and no plea having been interposed by the defendant the allegations of the indictment were taken as true, under section 330 of the Code of Criminal Procedure, and judgment of conviction was entered and the defendant sentenced to pay a fine of fifty dollars, or stand committed to the county jail until the fine was paid, not to exceed fifty days. The judgment was affirmed at the appellate division by a divided court and from this judgment the defendant has appealed to this court, and the appeal brings up for review all the questions raised by the demurrer to the indictment.

The statute upon which the judgment rests is to be found in the Penal Code (§ 384*l*) and reads as follows: "Any person who violates or does not comply with * * * the provisions of article eight of the labor law, relating to bakeries and confectionery establishments, the employment of labor and the manufacture of flour or meal food products therein * * * is guilty of a misdemeanor and upon conviction shall be punished for a first offense by a fine of not less than twenty nor more than one hundred dollars; for a second offense by a fine of not less than fifty nor more than two hundred dollars, or by imprisonment for not more than thirty days, or by both such fine and imprisonment; for a third offense by a fine of not less than two hundred and fifty dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment.

55 It will be seen that this section of the Penal Code does not specify the acts or omissions which are made crimes, nor does it in any appropriate terms define the crime at all, but refers for that purpose to another law. When we turn to article eight of the labor law, referred to above, we find that it contains six separate sections, commanding certain things and prohibiting certain things. The particular section which the indictment charges to have been violated by the defendant is the first section of the article, or section 110, and that reads as follows: "No employee shall be required or permitted to work in a biscuit, bread or cake bakery or confectionery establishment more than sixty hours in any one week, or more than ten hours in any one day, unless for the purpose of making a shorter work day on the last day of the week; nor more hours in any one week than will make an average of ten hours per day for the number of days during such week in which such employee shall work." While this section of the labor law does forbid certain things, no penalty whatever is attached to a violation, and, therefore, in order to get a definition of the particular crime charged in the indictment we must examine two general statutes upon different subjects; that is to say, we must read the Penal Code for the penalty or the punishment, and we must read the labor law in order to ascertain the particular act or omission which constitutes the crime.

One of the grounds of the demurrer is that the indictment charges two crimes. It will be seen that two things or two acts or omissions have been forbidden by the statute; it forbids the master from either

permitting or requiring the servant to work more than the time specified in the statute. Assuming for the present that the statute is valid, it makes it a crime for the master to permit the servant to work over the statutory time; and it also makes it a crime for him to require or compel the servant to so work. The two acts or omissions inhibited by the statute are essentially different in nature and character. It is one thing to permit the servant to work; it is quite another thing to compel or require it. Permitting him to
56 work more than the ten hours might be intentional or involuntary. *Compelling* or requiring him to work would be a deliberate act on the part of the master in violation of the statute. In the one case the punishment might very well be nominal; in the other case it would necessarily have to be substantial, and, hence, it would seem that two acts or omissions so essentially different in nature and character and each constituting a crime in itself could not properly be united in the same charge, and in this view the objection that more than one crime is stated in the indictment is good.

But the objection was also made that the acts or omissions stated in the indictment do not constitute a crime, and this objection raises the question as to the validity of the statute and is of much more importance than the form or substance of the indictment. It will be seen from an examination of the law that there is no prohibition against the act of the servant himself in working longer than the statutory time. He may work as many hours as he likes during the day and he violates no law and commits no offense whatever. So the broad question is whether a statute which makes it a crime for the master to permit his servant to do what the servant has a perfect right to do can be a valid law. No restrictions are imposed upon the servant with respect to the hours of labor or otherwise. As already remarked, he has a perfect right to work as many hours in a day or week as he may want to, but the master must see to it, at the peril of committing a crime, that his servants are driven out of the building the moment the clock registers the requisite ten hours, and that, too, without regard to the conditions and circumstances affecting the business or the interests of the master. It is a crime for the master to require or permit his servant to work over the statutory time, no matter how willing or even desirous the servant may be to earn extra compensation for overwork. The master is forbidden to contract with his servant for longer hours and extra pay, no matter what may be the wants or necessities of the business, or the judgment or will of the servant with respect to such a contract. It
57 is obviously one of those paternal laws, enacted doubtless with the best intentions, but which in its operation must inevitably put enmity and strife between master and servant. They are not left free to make their own bargains in their own way, but their mutual interests are governed by statute.

The sweeping character of the legislation in question may be illustrated by a reference to the last section of the article of the labor law referred to in the indictment; that is to say, to section 115. It is

there enacted as follows: "If, in the opinion of the factory inspector, alterations are required in or upon premises occupied and used as bakeries, in order to comply with the provisions of this article, a written notice shall be served by him upon the owner, agent or lessee of such premises, either personally or by mail, requiring such alterations to be made within sixty days after such service, and such alterations shall be made accordingly." There is no penalty for a failure to observe this law in the law itself, but when we look into the amendments of the Penal Code we find that the owner of a valuable building used as a bakery may be at the mercy of the factory inspector, since, if it happens that the rooms are less than eight feet in height, he must tear it down and rebuild it, if the factory inspector, so requires it, or be subject to a criminal prosecution, fine and imprisonment down to the third offense, and possibly so long as the orders of the inspector are not carried out. It is quite inconceivable that the legislature understood, when enacting the amendments to the code by reference to another law, that its action would have such a sweeping effect or confer such arbitrary powers upon a ministerial officer that affected the liberty and the property of the individual.

It is contended in behalf of the defendant that the law under which he was convicted violates section one of article fourteen of the Constitution of the United States, which prohibits any State from making or enforcing any law which shall deny to any person within its jurisdiction the equal protection of the law, and those provisions
of the constitution of this State which enact that no member
58 of this State shall be disfranchised or deprived of any of the
rights or privileges, secured to any citizen thereof, unless by the law of the land and the judgment of his peers, nor be deprived of life, liberty or property without due process of law. (Const. art. 1, §§ 1, 6.) The words "law of the land" do not mean an act of the legislature passed for the very purpose of working the wrong. The meaning is that no person shall be deprived of any of the rights or privileges secured to him by the constitution, unless the matter shall be adjudged against him upon a trial had according to law. It cannot be done by mere legislation. (Taylor *v.* Porter, 4 Hill, 140; White *v.* White, 5 Barb. 474; People *v.* Toynbee, 20 Barb. 198; Wynehamer *v.* People, 13 N. Y. 378; People *ex rel.* Warren *v.* Beck, 144 N. Y. 237; People *ex rel.* Rodgers *v.* Coler, 166 N. Y. 1; People *v.* Orange County Road Const. Co., 175 N. Y. 84.) The doctrine of these cases condemns the legislation in question as an invasion of the rights, liberties and property of the citizen. The three cases last cited grew out of the same law that is violated in the case at bar, or similar laws, and they cannot be distinguished from it in principle.

The labor law excludes from its regulations and restrictions all persons engaged in farm work or domestic service (art. 1, § 3) and, hence, a very large proportion of the people of the State who labor for a living are not affected by it at all. Why this large class of

wage earners who toil for a livelihood are excluded from the benefits of the statute, and those who employ them exempt from its burdens and restrictions, it is difficult to conceive. The farmers and that large class of people both in the city and in the country who employ domestics may require them to work any number of hours without violating any law. They commit no crime by requiring their servants to work from daylight till after dark or even into the night. The section of the law upon which the conviction in this case is based is aimed at a very small class of persons, namely, those who conduct "a biscuit, bread or cake bakery or confectionery establishment." Work of the same general character is exacted from cooks and domestic servants in practically all the pri-
59 vate houses in the land and to a great extent in hotels, restaurants and other public places. It would be absurd to say that all, or even the greater part of the biscuit, bread, cake and confectionery consumed in this State comes from what are called bakeries. The law does not even apply to bakers in the small towns and villages who do their own work. It applies only to bakers who find it necessary to employ labor, and they alone are subjected to criminal prosecution in case they *permit* the servant to work more than ten hours in a day, even though the servant is willing and is given extra compensation. The baker is forbidden, under the penalty of fine and imprisonment, to contract or agree with his servant upon the hours of labor in such way as would be mutually beneficial, but his business is practically regulated by statute. If for any reason he suffers or permits his servant to work an additional half-hour beyond the statutory time his liberty and his property are put at the mercy of the servant, who may procure him to be arrested and imprisoned. It does not appear from the record in this case, or in any other way, that there is anything in the business or vocation of a baker that would authorize the legislature to impose such criminal penalties upon him for permitting his servant to work more than ten hours in the day, or to restrict his freedom of contract, which is a right enjoyed by all other employers of labor. The guaranties of the constitution may be invaded without any physical interference with the person or property of the citizen. He is deprived of his property within the meaning of the constitution when arbitrary and unnecessary restrictions are imposed upon his conduct of any lawful business, and when he is deprived of the right to make contracts for the transaction thereof. Liberty, in its broad sense, means the right, not only of freedom from actual restraint of the person, but the right of such use of his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation. All laws, therefore, which impair or trammel those rights or restrict his freedom of action, or his choice of methods in the trans-
60 action of his lawful business, are infringements upon his fundamental right of liberty, and are void. (Matter of Jacobs, 98 N. Y. 98.) They cannot and should not escape the scrutiny of

the courts merely because they are made to assume, by argument or otherwise, the guise of police regulations.

The statute in question deprives the defendant of the equal protection of the law, since it enacts that certain acts or omissions on his part concerning the conduct of his business and his relations to his own servants are crimes and punished criminally, which, as to all the rest of the community not within the terms of this law, are entirely innocent. The very small fraction of the community who happen to conduct bakeries, or confectionery establishments, are prohibited, under pain of fine and imprisonment, from regulating the conduct of their own business by contracts or mutual agreements with their employees, whereas all the rest of the community who find it necessary to employ labor in private business may do so. Class legislation of this character which discriminates in favor of one person and against another is forbidden by the Constitution of the United States, if not by the constitution of the State; and so it has been held by the Supreme Court of the United States and by this court. (Gulf, C. & S. F. R. Co. *v.* Ellis, 165 U. S. 150; Cotting *v.* Kansas City S. Y. Co., 183 U. S. 79; Connolly *v.* U. S. P. Co., 184 U. S. 540; People *v.* Orange County Road Constr. Co., 175 N. Y. 87, 90.) It is, I think, quite obvious that the legislation in question is, upon its face, in conflict with the constitutional guaranties referred to, unless it can be brought within the scope of the police power. That is the only ground upon which the statute is defended by the learned district attorney. He contends that it is a health law passed for the purpose of protecting the public health, or at least the health of those persons employed in bakeries. The argument is that the defendant was forbidden by the statute to permit his workmen to work more than ten hours in a day, to the end that his customers might have wholesome bread, biscuit and confectionery,
61 whereas if they were permitted to work ten and a half hours in the day the product of the bakery would be unwholesome or dangerous to health. What possible relation or connection the number of hours that the workmen are permitted to work in the bakery has, or can have, to the healthful quality of the bread made there is quite impossible to conceive. The baker in the small towns, or even in the large towns, who does his own work and does not employ labor, may work day or night without fear of molestation, since no one thought it necessary to protect the public against his unwholesome product. It has already been observed that the law does not impose any penalties or restrictions upon the workman himself for working too much, and if the purpose was to protect his health against his own avarice, or his own misdirected energy, it is quite remarkable that it did not at least forbid him from working more than ten hours in a day.

The contention that the defendant was convicted for violating a health law is, at best I think, but a mere disguise that is not sufficient to save the statute from condemnation. There is nothing on the face of the law nor in its manifest operation to show that it has any

relation to the public health. It is no part of the health law but a part of a general statute known as the labor law. The execution of it was not intrusted to any of the health authorities, but to the factory inspector, which shows what its real scope and purpose was. The factory inspector is not the officer charged with the enforcement of health laws. The legislature classified it as a labor law, and it is that and nothing else. Laws which encroach upon the personal or property rights of the citizen, as guaranteed by the Constitution, are generally defended upon the ground that they are police regulations; but the courts have prescribed a test by means of which their true character and purpose may be known. The rule is that the court must be able to say judicially that the statute in question *is* a health law, and has some appropriate relation to the promotion or protection of health. It will not be deceived or misled by mere names or pretenses. The cases are numerous in which the
62 courts have condemned statutes as invasions of the rights secured to the citizen by the Constitution, though enacted or sought to be upheld under the guise of health laws or other police regulations. They all arrive at the same result, and that is that the legislature may not under the guise of a statute to protect against some wrong, real or imaginary, arbitrarily strike down private rights and invade personal freedom or confiscate private property. The police power must be exercised within its appropriate sphere and by appropriate methods. (Matter of Jacobs, *supra*; People *v.* Marx, 99 N. Y. 377; People *v.* Arensberg, 103 N. Y. 388; People *v.* Gillson, 109 N. Y. 389; Colon *v.* Lisk, 153 N. Y. 188; People *ex rel.* Rodgers *v.* Coler, 166 N. Y. 1; People *v.* Buffalo Fish Co., 164 N. Y. 101, 104; People *v.* Hawkins, 157 N. Y. 1.) It will not do to say that the legislature in enacting the statute in question may have thought that it was a health law, or had some relation to health. The action of the legislature, or its views or reasons for the passage of the law, does not conclude the courts, but they must determine for themselves whether in any given case the legislation which is claimed to be an exercise of the police power is really what it is claimed to be. Every labor law, however stringent and arbitrary, could just as well be upheld upon the ground that it is a health law; but in all the discussions that have been had in the courts for many years concerning the validity of legislation of this character, there are to be found but very few cases where it was even claimed that the statute was enacted for the purpose of preserving or promoting health, or that it had any relation whatever to that subject. When it is manifest, as it is in this case, that the law has no relation whatever to the subject of health, and that its real object and purpose was to regulate the hours of labor between master and servant in a business which is private and not dangerous to morals, or to health, freedom to contract with each other, defining their mutual obligations, cannot be prohibited without violating the fundamental law.

The defendant was charged in the indictment with the violation

of a single independent section of article eight of the labor
63 law, namely, the first section, which relates solely to the hours within which the master may permit the servant to work. The validity of that section is not affected or helped out by the character of some of the other sections of the article, since part of a statute may be perfectly valid and another part in conflict with the constitution. It is quite possible that some parts of the other five sections can be regarded as prescribing sanitary regulations, such as ventilation, plumbing, fire escapes and the like, but such regulations cannot save the first section which deals exclusively with the time within which the servant is to work and virtually makes a contract to be observed by the master alone, leaving the servant just as free as if the law had never been passed. A section, or sections, of a statute may be good that requires and prescribes sanitary regulations binding upon the landlord who owns and lets tenement houses in cities, but this would not save another section of the statute that prescribes the maximum rent that he may demand and receive from his tenants. It is even quite possible that a law might be held good that enjoins upon farmers or persons employing domestic help the duty of preserving their health against infectious diseases by reasonable and proper safeguards, such as ventilation of the rooms where they sleep and the like, but this would not save a separate section of the law prescribing the compensation that the master is required to pay to the servant. So that the section of the labor law with which we are now concerned can borrow no strength from its association with other sections of the statute that may be good. The single section of the labor law that we are now dealing with must stand or fall upon its own intrinsic character and can receive no support from the company in which it is found. If that section had also provided that every employee of a bakery would be guilty of a misdemeanor if he neglected or refused to faithfully serve his master for ten full hours in each day no one I apprehend would then claim that it was a health law. And yet every
argument and every authority cited in defense of the section
64 in its present form would be just as good then as they are now. The section would then be just as much of a health law as it is now.

It cannot be repeated too often that if the single section of the law with which we are now concerned and which is the sole basis of the criminal charge in this case, stood alone, the argument that it is a health law and within the police power would not have even a color of reason or authority to support it. But what the learned district attorney urges upon us is that since the section is found in the article associated with other sections prescribing sanitary regulations, we must assume that the legislators for some unexpressed reason sufficient to them, reached the conclusion that a baker ought not to be permitted or required to work on an average of more than ten hours in a day. Of course this reasoning is without force and does not meet the difficulty. The question is not what the unexpressed reason

is that moved the lawmakers, so long as it is impossible for any court to discover that reason or any reason to bring the enactment within the scope of the police power. It is always open to the courts to inquire and determine whether a statute is in fact fairly within the police power. That principle is found imbedded in all the cases on that subject. If it were otherwise and the real view of the legislature is made the dominant idea, then the court would be deprived of all power to declare any law void provided the legislature called it an exercise of the police power, or some one contended that it was supposed to be such upon some theory that the public interest required its enactment. There would be no limit then to the police power and every statute however arbitrary and in violation of the constitutional safeguards for the protection of life, liberty or property could be upheld on the plea that the lawmakers called it a health law or intended it as such, or thought it was necessary for that purpose. It is incumbent upon the courts to see to it that such laws are really what they profess to be, or if claimed to be police regulations that they are such within the reasonable scope of that power.

65 The bakers' vocation is one that has existed practically in all ages and in all countries. Wherever cereals are converted into bread, the standard food of the human race, except possibly as to those races that are considered savage or semi-savage, the making of bread is one of the most common employments. The process is familiar to the domestics in every public or private house in the land as well as in the places called bakeries, where bread is made for sale to the public. It has never been supposed that it was a trade or vocation that was or might be dangerous to health, morals or good order, or that there was anything about it to justify legislation restricting the right of the master and servant to make their own contracts, express or implied, with respect to hours of work or the terms of employment. There is nothing in the record before us from which it can be inferred that there was any ground for the passage of the statute as a police regulation for the protection of health, morals or good order, and, hence, it cannot be upheld as an exercise of the police power. It is a plain discrimination against a limited class of people who happen to be obliged to employ labor in the manufacture of bread, biscuit or confectionery in those places called bakeries. This relatively small class are restricted by the statute to the regulations there prescribed with respect to the hours of labor by their employees and are prohibited from agreeing with them as to the time they are to work even though extra pay should be given for overwork, a right which the law gives to all other persons employing labor. If the legislature can do all this then the right to enact what wages the servant shall receive per day or per hour must necessarily follow as an inevitable conclusion. A statute fixing the wages of the servant at such a sum as to enable him to live more comfortably could be defended as a health law by the same argu-

ment and authority adduced in support of the section of the present law, the violation of which is the only crime charged.

It is doubtless within the power of the legislature to enact that a ton of coal or a bushel of wheat shall contain a certain number of pounds; but it cannot prohibit parties from entering into contracts to the effect that a ton of coal or a bushel of wheat
66 shall contain more or less than the quantity prescribed by statute. When there is no contract regulating the matter, and there is a dispute between the parties as to what constitutes a ton of coal or a bushel of wheat, the statute would doubtless be available to settle the controversy. So in the case of the master and servant with respect to the number of hours that shall constitute a day's work. The legislature may no doubt define what is or shall constitute a day's work, but it cannot prohibit the parties from making agreements for themselves, and then custom or contract, express or implied, would control the mutual obligations of the parties.

The facts stated in the indictment do not constitute a crime, and therefore, the demurrer must be sustained, the judgment of conviction reversed and the defendant discharged.

BARTLETT, *J.* (dissenting):

I agree with Judge O'Brien for reversal. In one of the encyclopædia authorities cited for respondent it is said: "Bakers and confectioners who, during working hours, constantly breathe air filled with the finest dust from flour and sugar, have a tendency to consumption," etc. The authorities cited condemning the calling of a baker as unhealthy, doubtless refer to localities where they grind the grain, loaf-sugar and other materials used. It may be observed in passing that "the medical authorities without number" might lose some of their force if the writer were, where he should be, in court and subjected to cross-examination.

It is common experience that the baker, like the cooks in hotels, restaurants and private families, has provided for him in his business flour, sugar and the other ingredients duly prepared for immediate use. The claim that the compounding of these constituents, so prepared, in the business of a baker, is an unhealthy occupation, will surprise the bakers and good housewives of this State. The grinding of steel, like the needle-grinding of Sheffield, England, and of other similar materials and substances, causing clouds of impalpable dust, is not to be confounded with the avocation of the family baker
engaged in the necessary and highly appreciated labor of
67 producing bread, pies, cakes and other commodities more calculated to cause dyspepsia in the consumer than consumption in the manufacturer.

The country miller of fifty years ago who passed a long and happy life amid the hum of machinery and the grinding process of the upper and nether stones, little dreamed of a coming day when the legislature, in the full panoply of paternalism, would rescue his

successor from the appalling dangers of the life he led until old age summoned him to retire.

It has been frequently said that the limits of the police power cannot be accurately defined; that it is not desirable the legislature should be thus trammeled.

When this court held that the legislature acted in the legitimate, undiscriminating exercise of the police power in compelling all barbers to observe strictly the first day of the week, commonly called Sunday, except in the village of Saratoga Springs and the city of New York, the legal profession doubtless concluded that the elasticity of the undefined had arrived at its *Ultima Thule*. (People *v.* Havnor, 149 N. Y. 195.) That this conclusion was erroneous is shown by the fact that the case is now doing duty against the baker when men in kindred occupations are permitted to work as many hours as necessity dictates.

Another question in this case is whether section 110, contained in article 8 of the labor law (chapter 415, Laws of 1897), is within the police power. This section is contained in article 8, which consists of sections 110, 111, 112, 113, 114 and 115. I am of the opinion that all the sections of said article, excepting section 110, are within the police power, relating as they do to sanitary conditions concerning the business of a baker. Placing section 110, relating exclusively as it does to hours of labor in bakeries and confectionery establishments, in article 8, does not bring it within the police power.

In a recent case this court said: "In the interest of public health, of public morals and of public order, a State may restrain and forbid what would otherwise be the right of a private citizen.
68 It may enact laws to regulate the extent of labor which women and children or persons of immature years shall be allowed to perform, and prohibit altogether their employment in dangerous occupations. (Commonwealth *v.* Hamilton Mfg. Co., 120 Mass. 383; Tiedeman's Police Power, § 85.)" (People *v.* Orange County Road Cons. Co., 175 N. Y. 84, 87, 88.)

The State may also regulate the hours of labor in deep and unhealthy mines, and in any vocation where it is pursued at the risk of health and life. It is because I believe that the occupation of a baker does not fall within these general principles, and the array of authorities cited, I vote for reversal.

Parker, Ch. J., Gray and Vann, JJ., read for affirmance, and Haight, J., concurs; O'Brien and Bartlett, JJ., read for reversal, and Martin, J., concurs.

Judgment affirmed.

STATE OF NEW YORK,
Oneida County Clerk's Office, } ss:

I, Hermon Clarke, clerk of said county, and of the supreme and county courts therein, the same being courts of record, do hereby

certify, that I have compared the annexed copy of opinions and the endorsements thereupon with the original thereof, on file in this office, and that the same is a correct transcript therefrom, and of the whole of said original.

In witness whereof, I have hereunto set my hand, and affixed the seal of said county and courts, at the city of Utica, this 27 day of May 1904.

[Seal Oneida County, New York.]

HERMON CLARKE, Clerk,
By GEO. D. FRANK,
Deputy Clerk.

69 At a term of the Oneida county court, held at the court house in the city of Utica, on the 4th day of April, 1904.

Present: Hon. Watson T. Dunmore, justice presiding.

Oneida County Court, Oneida County.

THE PEOPLE OF THE STATE OF NEW YORK
against
JOSEPH LOCHNER.

The defendant, Joseph Lochner, having appealed to the court of appeals from the judgment of conviction heretofore, and on the 3rd day of October, 1902, entered in the above entitled action, affirming the judgment entered in said action on the 10th day of February, 1902; and said court of appeals having heard the said appeal, and having ordered and adjudged that said judgment of conviction so appealed from be affirmed:

Now, upon filing the remittitur from said court of appeals, and upon motion of Timothy Curtin, district attorney of Oneida county, for the people:

Ordered, that said judgment of the court of appeals, be and the same is hereby made the judgment of this court; and that the aforesaid judgment entered herein on the 10th day of February, 1902, be and the same is hereby affirmed, and that judgment of this court be entered herein affirming said judgment of conviction.

Enter.

W. T. DUNMORE,
Oneida Co., Judge.

STATE OF NEW YORK,
Oneida County Clerk's Office, } ss:

I, Hermon Clarke, clerk of said county, and of the supreme and county courts therein, the same being courts of record, do hereby certify, that I have compared the annexed copy of order, affirming jud. and the endorsements thereupon with the original thereof, on

file in this office, and that the same is a correct transcript therefrom, and of the whole of said original.

In witness whereof, I have hereunto set my hand, and affixed the seal of said county and courts, at the city of Utica, this 27 day of May 1904.

[Seal Oneida County, New York.]

HERMON CLARKE, Clerk,
By GEO. D. FRANK,
Deputy Clerk.

70 [Endorsed:] Oneida county court: The People of the State of New York against Joseph Lochner. Order upon remittitur from court of appeals, affirming judgment. Timothy Curtin, district attorney of Oneida county, 103 S. James street, Rome, N. Y. Filed April 4 1904 in Oneida Co. clerk's office.

SIR: Take notice of an entry of an order, of which the within is a copy, duly granted and filed in Oneida Co. clerk's office April 4, 1904—and copy of which is served upon you.

Yours, &c.,
TIMOTHY CURTIN,
Dist. Att'y *of* Oneida Co.

71 Oneida County Court, Oneida County.

THE PEOPLE OF THE STATE OF NEW YORK
against
JOSEPH LOCHNER.

Judgment of the 4th day of April, 1904.

The defendant, Joseph Lochner having appealed to the court of appeals from the judgment heretofore, and on the 3rd day of October, 1902, entered in the above entitled action, affirming the judgment entered in said action, on the 10th day of February, 1902, and said court of appeals having heard the said appeal and ordered and adjudged that said judgment so appealed from be affirmed, and the remittitur from said court of appeals having been duly filed in this court, and an order duly entered thereon, making the judgment of the court of appeals the judgment of this court, and directing judgment to be entered herein, as hereinafter adjudged,

Now, on motion of Timothy Curtin, district attorney of Oneida county, for the people,

It is adjudged, that the judgment of conviction hereinbefore mentioned, entered herein on the 10th day of February, 1902, be and the same is hereby affirmed, and that this judgment be enforced according to law.

GEORGE D. FRANK,
Dep. Co. Clerk.

STATE OF NEW YORK, } ss:
Oneida County Clerk's Office, }

I, Hermon Clarke, clerk of said county, and of the supreme and county courts therein, the same being courts of record, do hereby certify, that I have compared the annexed copy of order and the endorsements thereupon with the original thereof, on file in this office, and that the same is a correct transcript therefrom, and of the whole of said original.

In witness whereof, I have hereunto set my hand, and affixed the seal of said county and courts, at the city of Utica, this 27 day of May, 1904.

[Seal Oneida County, New York.]

HERMON CLARKE, Clerk,
By GEO. D. FRANK,
Deputy Clerk.

72 [Endorsed:] Oneida county court: The People of the State of New York against Joseph Lochner. Judgment upon remittitur from court of appeals affirming judgment. Filed April 4 1904 in Oneida Co. clerk's office.

SIR: Take notice of an entry of a judgment, of which the within is a copy, duly granted in the within entitled action, on the 4th day of April, 1904, and duly entered in the office of the clerk of Oneida county, on the 4th day of April, 1904. Copy of which is herewith served.

Dated, Rome, N. Y., April 5, 1904.

Yours, &c.,
TIMOTHY CURTIN,
District Attorney of Oneida County,
103 S. James Street, Rome, N. Y.

73 In the Supreme Court of the United States.

JOSEPH LOCHNER, Defendant and Plaintiff in Error,
against
THE PEOPLE OF THE STATE OF NEW YORK, Plaintiffs and Defendants in Error.

Upon motion of Frank Harvey Field, Esq., attorney for plaintiff in error, and upon filing the petition for a writ of error and assignment of errors, it is

Ordered that a writ of error be and hereby is allowed, to have reviewed by the Supreme Court of the United States the judgment heretofore entered herein by the county court of Oneida county in the State of New York, and affirmed by the appellate division of the supreme court for the fourth judicial department of the State of New York, and by the court of appeals of the State of New York,

said court of appeals being the court of last resort of said State of New York; and that the amount of bond on said writ of error be, and hereby is fixed at one hundred dollars ($100).

And it is further ordered that all further proceedings in the county court of Oneida county be suspended and stayed until the determination of said writ of error by the Supreme Court of the United States.

May 18, 1904.

R. W. PECKHAM,
Asso. Jus. Sup. Ct. U. S.

74 County Court, Oneida County.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiffs,
against
JOSEPH LOCHNER, Defendant.

To the Supreme Court of the United States:

Joseph Lochner, defendant in the above entitled cause, feeling himself aggrieved by the verdict of the jury and the judgment entered thereon, on the 10th day of February, 1902, comes now, by Frank Harvey Field, his attorney, and petitions said court for an order allowing said defendant to prosecute a writ of error to the honorable the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which defendant should give and furnish upon said writ of error, and that upon the giving of such security, all further proceedings of this court be suspended and stayed until the determination of said writ of error by the Supreme Court of the United States.

And your petitioner will ever pray.

FRANK HARVEY FIELD,
Attorney for Defendant.

HENRY WEISMANN, Of Counsel.

STATE OF NEW YORK,
Oneida County Clerk's Office, } ss:

I, Hermon Clarke, clerk of said county, and of the supreme and county courts therein, the same being courts of record, do hereby certify, that I have compared the annexed copy of petition and order for writ of error and the endorsements thereupon with the original thereof, on file in this office, and that the same is a correct transcript therefrom, and of the whole of said original.

In witness whereof, I have hereunto set my hand, and affixed the seal of said county and courts, at the city of Utica, this 28 day of May 1904.

[Seal Oneida County, New York.]

HERMON CLARKE, Clerk.
——— ———, Deputy Clerk.

75 [Endorsed:] U. S. Supreme Court. Joseph Lochner, defendant, and plaintiff in error, against The People of the State of New York plaintiffs and defendants in error. Petition and order for writ of error. (Copy). Frank Harvey Field, attorney for defendant, and plaintiff in error, 44 Court street, borough of Brooklyn, city of New York, N. Y. Filed May 27, 1904, in Oneida Co. clerk's office.

76 In the Supreme Court of the United States.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiffs, *against* JOSEPH LOCHNER, Defendant. } Assignment of Errors.

Now comes the plaintiff in error, in the above entitled cause, by Frank Harvey Field, his attorney, and says that in the record and proceedings in the above entitled matter, there is manifest error in this, to wit:—

I.

That the court below erred in holding that section 110 of article 8, of chapter 415 of the Laws of 1897, of the State of New York, entitled "The labor law," does not violate article 14, section 1, of the Constitution of the United States, in holding that the facts as set forth in the indictment constitute a crime.

II.

That the court below erred in holding that section 110 of article 8, of chapter 415 of the Laws of 1897 of the State of New York, entitled "The labor law" was constitutional and not in violation of article 14, section 1 of the Constitution of the United States.

III.

That the court below erred in holding that section 110 of article 8, of chapter 415 of the Laws of 1897 of the State of New York, entitled "The labor law" is a health measure, and is a reasonable and proper exercise of the police power of the said State of New York.

IV.

77 That the court below erred in holding that section 110, of article 8, of chapter 415 of the Laws of 1897 of the State of New York, entitled "The labor law" did not violate the 1st section of the 14th amendment of the Constitution of the United States, in that it did not abridge the privileges and immunities of the citizens of the United States in respect to the freedom of individuals to enter into contract with one another.

V.

That the court below erred in holding that section 110, of article 8, of chapter 415 of the Laws of 1897, of the State of New York, entitled "The labor law," did not violate section 1 of article 14 of the Constitution of the United States, in that it did not deprive plaintiff in error of his liberty and property "without due process of law," in that it did not permit him to agree with his employees upon the number of hours per day and week in which they should work.

VI.

That the court below erred in holding that section 110 of article 8, of chapter 415 of the Laws of 1897, of the State of New York, entitled "The labor law" does not violate article 14, section 1 of the Constitution of the United States, in that it denies to plaintiff in error the equal protection of the laws, and in holding said act is not class legislation, and is equal and uniform.

VII.

That the court below erred in holding that section 110 of article 8, of chapter 415 of the Laws of 1897 of the State of New York, entitled "The labor law" does not violate article 14, section 1 of the Constitution of the United States, in that said law fixes an arbitrary number of hours during which employees in bakeries in said State shall be employed and allowed to work, thus discriminating between such employees and employees in other lines of business, and in refusing to allow such employees to contract with their employers for extra hours of work, as in other occupations they are allowed to do.

78 VIII.

That the court below erred in holding that section 110 of article 8, of chapter 415 of the Laws of 1897 of the State of New York, entitled "The labor law" does not violate article 14, section 1 of the Constitution of the United States, in that by reason of the nature of the bakery business it is sometimes necessary to contract with employees for extra hours of labor, in order to save and preserve the property of the employer; and by the decision of the court below, the plaintiff in error is deprived of his property without due process of law.

And the defendant in the above entitled cause, (plaintiff in error in this court) prays the court that the final judgment rendered in this cause by the county court of Oneida county in the State of New York, affirmed by the appellate division for the fourth judicial department of the said State and by the court of appeals of the said State may be reversed, annulled, and altogether held for nothing; that the plaintiff in error may be adjudged to be innocent of the

crime charged in the indictment, tried in the said county court of Oneida county, and that this honorable court will send its mandate to the said county court of Oneida county, commanding the said court to enter judgment in said cause vacating and annulling the judgment of conviction found against this defendant, (plaintiff in error in this court), and commanding said county court of Oneida county to release and discharge the said defendant (plaintiff in error in this court), and awarding costs to the plaintiff in error, in accordance with the laws and customs of the United States thereunto pertaining.

In order that the foregoing assignment of errors may be and appear of record, the plaintiff in error presents the same to the court, and prays that such disposition be made thereof as in accordance with law and the statutes of the United States in such cases made and provided.

79 All of which is respectfully submitted,

FRANK HARVEY FIELD,
Attorney for Plaintiff in Error
(Defendant in the Lower Court).

HENRY WEISMANN,
Of Counsel. [SEAL.]

STATE OF NEW YORK,
Oneida County Clerk's Office, } ss.:

I, Hermon Clarke, clerk of said county, and of the supreme and county courts therein, the same being courts of record, do hereby certify, that I have compared the annexed copy of ass'g't of errors, and the endorsements thereupon with the original thereof, on file in this office, and that the same is a correct transcript therefrom, and of the whole of said original.

In witness whereof, I have hereunto set my hand, and affixed the seal of said county and courts, at the city of Utica, this — day of —— 190–

[Seal Oneida County, New York.]

HERMON CLARKE, Clerk.
—— ——, Deputy Clerk.

80 [Endorsed:] U. S. Supreme Court. Joseph Lochner, defendant and plaintiff in error, against The People of the State of New York, plaintiffs and defendants in error. Assignment of errors. (Copy.) Frank Harvey Field, attorney for defendant, and plaintiff in error, 44 Court street, borough of Brooklyn, city of New York, N. Y. Filed May 27, 1904 in Oneida Co. clerk's office.

81 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judge of the county court of Oneida county, State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said county court upon a remittitur from the court of appeals of the State of New York before you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The People of the State of New York, plaintiff, and Joseph Lochner, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the con-
82 struction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said defendant as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said supreme court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said supreme court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 18th day of May, in the year of our Lord one thousand nine hundred and four.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
R. W. PECKHAM,
Associate Justice of the
Supreme Court of the United States.

[Endorsed:] Filed or lodged May 27, 1904, in Oneida Co. clerk's office.

83 Know all men by these presents, that we, Joseph Lochner of the city of Utica, in the county of Oneida, State of New York, as principal, and Alexander Stein, residing in the city of Utica, county of Oneida, State of New York, as surety, are held and firmly bound unto the People of the State of New York, in the full and just sum of one hundred dollars ($100) to be paid to the said The People of the State of New York, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators or successors, jointly and severally by these presents.

Sealed with our seals this 18th day of April, 1904.

Whereas, lately at a term of the Oneida county court in and for the county of Oneida in the State of New York, in a suit depending in said court between The People of the State of New York, and Joseph Lochner a judgment was rendered against the said Joseph Lochner, and an appeal having been taken to the court of appeals of the State of New York, and a judgment there against the said Joseph Lochner having been thereafter remitted for enforcement to the Oneida county court of the said State and the said Joseph Lochner being about to apply to the United States Supreme Court for a writ of error to review the determination of the highest court of said State in the United States Supreme Court.

Now the condition of the above obligation is such, that if the above named Joseph Lochner shall appear and answer the charge against him in whatever court it may be prosecuted, and pending the decision of this appeal shall at all times render himself amenable to the orders and process of the court, and in the event of the affirmance of the decision of the court of appeals of the State of New York appear and render himself unto the jurisdiction of the
84 court; then this obligation to be void, else in full force and virtue.

JOSEPH LOCHNER. [L. S.]
ALEXANDER STEIN. [L. S.]

Attest
Sealed and delivered in presence of

SMITH M. LINDSLEY.
WILLIAM S. MACKIE.

Approved by

W. T. DUNMORE,
County Judge of Oneida County.

85 STATE OF NEW YORK, } ss.:
County of Oneida, }

Alexander Stein being duly sworn, says that he is a freeholder in the State of New York, and resides in the city of Utica, in the county of Oneida, and is worth the sum of two hundred dollars

($200) over and above all debts and liabilities and property exempt from execution.

ALEXANDER STEIN.

Sworn to before me this 18th day of April, 1904.

MARY R. JONES,
Notary Public.

STATE OF NEW YORK, County of Oneida, } ss:

On this 18th day of April 1904, before me personally came Joseph Lochner and Alexander Stein to me known to be the individuals described in and who executed the foregoing bond and they severally duly acknowledged to me that they executed the same.

MARY R. JONES,
Notary Public.

STATE OF NEW YORK, Oneida County Clerk's Office, } ss:

I, Hermon Clarke, clerk of said county, and of the supreme and county courts therein, the same being courts of record, do hereby certify that I have compared the annexed copy of undertaking on appeal and the endorsements thereupon with the original thereof, on file in this office, and that the same is a correct transcript therefrom, and of the whole of said original.

In witness whereof, I have hereunto set my hand and affixed the seal of said county and courts, at the city of Utica, this 4 day of June 1904.

[Seal Oneida County, New York.]

HERMON CLARKE, Clerk.
——— ———, Deputy Clerk.

86 [Endorsed: Oneida county court. The people of the State of New York *vs.* Joseph Lochner. Undertaking on appeal to United States Supreme Court. I approve of the within undertaking both as to its manner and form and as to the sufficiencies of the sureties therein. W. T. Dunmore, Oneida Co. judge. Filed May 11, 1904 in Oneida Co. clerk's office. Approved May 2, 1904. R. W. Peckham, asso. jus. Sup. Ct. U. S.

87 UNITED STATES OF AMERICA, ss:

To the People of the State of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the county court of Oneida county, State of New York, wherein Joseph Lochner is plaintiff in error and you are defendant

in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, this 18th day of May, in the year of our Lord one thousand nine hundred and four.

R. W. PECKHAM,
Associate Justice of the Supreme Court
of the United States.
W. T. DUNMORE,
Oneida County Judge.

88 On this 2nd day of June, in the year of our Lord one thousand nine hundred and four, personally appeared Medford B. Farrington before me, the subscriber, and makes oath that he delivered a true copy of the within citation to Frank Wayland Higgins, lieutenant governor of the State of New York, and chief executive magistrate during the absence of the governor in Europe.

MEDFORD B. FARRINGTON.

Sworn to and subscribed the 2nd day of June, A. D. 1904.

{Seal of William M. Thomas, Notary Public, Albany, Albany Co., N. Y.}

W. M. THOMAS,
Notary Public, Albany Co., N. Y.

Fees $1.00.

Original.

On the 27th day of May, in the year of our Lord one thousand nine hundred and four, personally appeared Joseph E. Clark Jr., before me, the subscribed and made oath that he delivered a true copy of the within citation to John Cunneen, attorney general of the State of New York.

JOSEPH E. CLARK, Jr.

Sworn to and subscribed the 7th day of June, A. D. 1904.

[Seal of Nathaniel F. Cornwell, Notary Public, Kings County.]

NATHANIEL F. CORNWELL,
Notary Public, Kings County.

Endorsed on cover: File No. 19,392. New York, Oneida county, county court. Term No. 292. Joseph Lochner, plaintiff in error, *vs.* The People of the State of New York. Filed June 8th, 1904. File No. 19,392.

FILE COPY.

Office Supreme Court U.
FILED
DEC 9 1904
JAMES H. McKENNEY,
Clerk

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1904.

JOSEPH LOCHNER, Plaintiff in Error, (Defendant below),

vs.

THE PEOPLE OF THE STATE OF NEW YORK, Defendant in Error, (Plaintiff below).

No. 292.

On Writ of Error to the County Court of Oneida County of the State of New York.

MOTION TO ADVANCE.

And now comes the plaintiff in error and moves the Court to advance this case, being No. 292 on the docket of this Court, and assign the same for early hearing, at the present term of the Court, at as early a day after the 23d of January, 1905, as may be practicable and convenient, and for grounds of said motion respectfully assigns the following:

1. This action was commenced in the County Court of Oneida County in the State of New York. It was a criminal proceeding, in which the defendant, Joseph Lochner, was charged with a mis-

demeanor, in that he violated Section 110 of Article eight, of Chapter 415 of the Laws of 1897 of the State of New York, known as "The Labor Law," which said Section reads as follows:

> "No employee shall be required or permitted to work in a biscuit, bread or cake bakery or confectionery establishment more than sixty hours in any one week or more than ten hours in any one day, unless for the purpose of making a shorter work day on the last day of the week; nor more hours in any one week than will make an average of ten hours per day for the number of days during such week in which such employee shall work."

2. The indictment charges that on the 21st day of December 1899, he, the plaintiff in error, was arrested upon complaint of one of his employees for violating the law in *permitting* an employee to work in a bakery more than sixty hours in any one week. That he was convicted in the County Court, and fined twenty dollars, or in default thereof, stand committed to the County Jail for twenty days, and that he paid the fine; that after such conviction the defendant wrongfully, unlawfully and knowingly, with intent on his part to violate the law, *permitted* and employed another employee named, to work more than sixty hours in one week during the week commencing April 19th, and ending April 26th, 1901, in the defendant's biscuit, bread and cake bakery and confectionery establishment, thereby committing a misdemeanor as a second offense, contrary to the form of the statute in such case made

and provided, and against the peace of the people of the State of New York and their dignity.

3. The defendant demurred to the indictment on two grounds, (1) that more than one crime was charged and (2) that the facts stated did not constitute a crime. The local court overruled the demurrer, and the different allegations in the indictment were taken as true under Section 339 of the Code of Criminal Procedure of said State; and judgment of conviction was entered, and the defendant sentenced to pay the fine of $50., or stand committed to the County Jail until the fine was paid, not to exceed fifty days. The judgment was affirmed at the Appellate Division by a divided court, and from that judgment the defendant appealed to the Court of Appeals, where the judgment was again affirmed by a bare majority of the Court.

4. The statute upon which the judgment rests is to be found in the Penal Code, Section 384-1, and reads as follows:

> "Any person who violates or does not comply with * * * the provisions of Article eight of The Labor Law, relating to bakeries and confectionery establishments, the employment of labor and the manufacture of flour or meal food products therein * * * is guilty of a misdemeanor, and upon conviction shall be punished for a first offense by a fine of not less than twenty nor more than one hundred dollars; for a second offense, by a fine of not less than fifty nor more than two hundred dollars,

or by imprisonment for not more than thirty days, or by both such fine and imprisonment; for a third offense by a fine of not less than two hundred and fifty dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment."

5. The plaintiff in error claims that said Section 110 of "The Labor Law" violates Article fourteen, Section 1 of the Constitution of the United States, in holding that the facts as set forth in the indictment constitute a crime.

The question is substantially as follows: Is Section 110 of "The Labor Law" a reasonable and proper exercise of the police power of the State of New York.

The plaintiff in error has filed eight assignments of error, covering fully the application of Section 1 of Article fourteen of the Constitution of the United States to the proposition above stated.

6. The assignments of error before the Court in this case are of great public importance, and until they are definitely and authoritatively determined by this Court, they will continue to be a source of embarrassment to the numerous baking establishments within the State of New York. In the baking business it is impossible to tell in just what space of time the product of the bakery can be turned out; it differs by reason of temperature and other matters. The boss bakers are at times obliged to hire their men to work extra time. This is well understood, and the men contract to work such

extra time for extra pay. As at present interpreted, the law in question leaves the bakers at the mercy of discharged employees, who may harrass their employers by arresting them under the provisions of this statute, for *"permitting"* them to work more than ten hours a day, or sixty hours a week.

7. There are about four thousand bakers in the City of New York alone, who are anxiously awaiting a decision of this case.

Plaintiff in error further says that, as above appears, his personal liberty is involved in respect of the alleged violation of the statute aforesaid, and that if compelled to serve out said sentence in accordance with the terms thereof, he would be subjected to great humiliation, annoyance and expense in a matter over which the courts of the State of New York have no jurisdiction, and no authority to compel him to submit to said imprisonment and to pay said fine.

8. Plaintiff in error further says that there are involved in this case grave and fundamental Constitutional questions concerning the validity of said statute, and the Constitutional rights and liberties of all persons in said State who are in any way amenable to said law, while the same remains in force and effect, and that the final and speedy determination of this Court as to the constitutionality of said statute, is a matter of great public importance, involving as it does the right of all persons in said State coming within its provisions, to enter into contracts with employees or to engage their services for a greater time than ten hours a day.

9. For the reasons aforesaid it is respectfully submitted that the case at bar should be advanced for the earliest possible hearing after the 23d day of January, 1905; this limitation as to the time of said hearing having been consented to by the Attorney General of the State of New York, the defendant in error, who has filed in the office of the Clerk of this Court his consent to the advancement of said case, a copy of which is hereto annexed, marked Exhibit "A," and asked to be taken and considered a part hereof.

We are also authorized to say that the Attorney General of the State of New York concurs in this motion.

WASHINGTON, D. C.
December 19, 1904.

FRANK HARVEY FIELD,
Attorney for Plaintiff in Error.

HENRY WEISMANN,
of Counsel.

EXHIBIT "A"

IN THE

SUPREME COURT OF THE UNITED STATES.

JOSEPH LOCHNER, Plaintiff in Error, (Defendant below),

vs.

THE PEOPLE OF THE STATE OF NEW YORK, Defendant in Error, (Plaintiff below).

No. 292.

The parties in the above entitled case respectfully request its advancement on the calendar for argument at any time after January 23rd, 1905.

TIMOTHY CURTIN,

Attorney for the People, Defendant in Error, by Request and Consent of the Attorney General of the State of New York.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1904.

JOSEPH LOCHNER, Plaintiff in Error (Defendant below),

vs.

THE PEOPLE OF THE STATE OF NEW YORK, Defendant in Error (Plaintiff below).

No. 292

IN ERROR TO THE COUNTY COURT OF ONEIDA COUNTY, STATE OF NEW YORK.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

This action was commenced in the County Court of Oneida County in the State of New York. It was a criminal proceeding in which the defendant, Joseph Lochner, was charged with a misdemeanor, in that he violated Section 110, of Article Eight, of Chapter 415, of the Laws of 1897, of the State of New York, known as "The Labor Law," which said Section reads as follows:

"No employe shall be required or permitted to work in a biscuit, bread or cake bakery or confectionery establishment more than sixty hours in any one week or more than ten hours in any one day, unless for the purpose of making a shorter work day on the last day of the week; nor more hours in any one week than will make an average of ten hours per day for the number of days during such week in which such employe shall work."

The indictment charges that on the 21st day of December 1899, he, the plaintiff in error, was arrested upon complaint of one of his employees for violating the law in permitting an employe to work in a bakery more than sixty hours in any one week. That he was convicted in the County Court, and fined twenty dollars, or in default thereof, stand committed to the County Jail for twenty days, and that he paid the fine; that after such conviction the defendant wrongfully, unlawfully and knowingly, with intent on his part to violate the law, permitted and employed another employe named, to work more than sixty hours in one week during the week commencing April 19th, and ending April 26th, 1901, in the defendant's biscuit, bread and cake bakery and confectionery establishment, thereby committing a misdemeanor as a second offense, contrary to the form of the statute in such case made and provided and against the peace of the people of the State of New York and their dignity.

The defendant demurred to the indictment on two grounds, (1) that more than one crime was charged and (2) that the facts stated did not constitute a crime. The local court overruled the demurrer and the different allegations in the indictment were taken as true under Section 330 of the Code of Criminal Procedure of said State; and

judgment of conviction was entered, and the defendant sentenced to pay the fine of $50, or stand committed to the County Jail until the fine was paid, not to exceed fifty days. The judgment was affirmed at the Appellate Division by a divided court, and from that judgment the defendant appealed to the Court of Appeals, where the judgment was again affirmed by a bare majority of the Court.

The Statute upon which the judgment rests is to be found in the Penal Code, Section 384-1, and reads as follows:

> "Any person who violates or does not comply with * * * the provisions of Article Eight of The Labor Law, relating to bakeries and confectionery establishments, the employment of labor and the manufacture of flour or meal food products therein * * * is guilty of a misdemeanor, and upon conviction shall be punished for a first offense by a fine of not less than twenty nor more than one hundred dollars; for a second offense, by a fine of not less than fifty nor more than two hundred dollars, or by imprisonment for not more than thirty days, or by both such fine and imprisonment; for a third offense by a fine of not less than two hundred and fifty dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment."

The case was argued in the New York State Courts upon the constitutionality of the Statute in question under the State and Federal Constitutions. The Assignment of Errors in various forms brings before this Court the constitutionality of the Statute Section 110, of Article 8, of Chapter 415, of the Laws of 1897, of the State of New York, alleging that it violates Article 14, Section 1, of the

United States Constitution in that it abridges the privileges and immunities of certain citizens of New York State, that it deprives them of their property without due process of law and that it denies to them the equal protection of the laws.

ASSIGNMENT OF ERRORS.

I.

That the court below erred in holding that Section 110 of Article 8, of Chapter 415 of the Laws of 1897, of the State of New York, entitled "The Labor Law," does not violate Article 14, Section 1, of the Constitution of the United States, in holding that the facts as set forth in the indictment constitute a crime.

II.

That the court below erred in holding that Section 110 of Article 8, of Chapter 415 of the Laws of 1897 of the State of New York, entitled "The Labor Law" was constitutional and not in violation of Article 14, Section 1 of the Constitution of the United States.

III.

That the court below erred in holding thta Section 110 of Article 8, of Chapter 415 of the Laws of 1897 of the State of New York, entitled "The Labor Law" is a health measure, and is a reasonable and proper exercise of the police power of the said State of New York.

IV.

That the court below erred in holding that Section 110 of Article 8, of Chapter 415 of the Laws of 1897 of the State of New York, entitled "The Labor Law" did not violate the 1st Section of the 14th Amendment of the Constitution of the United States, in that it did not abridge the privileges and

immunities of the Citizens of the United States in respect to the freedom of individuals to enter into contract with one another.

V.

That the court below erred in holding that Section 110, of Article 8, of Chapter 415 of the Laws of 1897, of the State of New York, entitled "The Labor Law," did not violate Section 1 of Article 14 of the Constitution of the United States, in that it did not deprive plaintiff in error of his liberty and property "without due process of law," in that it did not permit him to agree with his employees upon the number of hours per day and week in which they should work.

VI.

That the court below erred in holding that Section 110 of Article 8, of Chapter 415 of the Laws of 1897, of the State of New York, entitled "The Labor Law" does not violate Article 14, Section 1 of the Constitution of the United States, in that it denies to plaintiff in error the equal protection of the laws. And in holding said act is not class legislation and is equal and uniform.

VII.

That the court below erred in holding that Section 110 of Article 8, of Chapter 415 of the Laws of 1897 of the State of New York, entitled "The Labor Law" does not violate Article 14, Section 1 of the Constitution of the United States, in that said law fixes an arbitrary number of hours during which employees in bakeries in said State shall be employed and allowed to work, thus discriminating between such employees and employees in other lines of business, and in refusing to allow such employees to contract with their employers for

extra hours of work, as in other occupations they are allowed to do.

VIII.

That the court below erred in holding that Section 110, of Article 8, of Chapter 415, of the Laws of 1897 of the State of New York, entitled "The Labor Law" does not violate Article 14, Section 1 of the Constitution of the United States, in that by reason of the nature of the bakery business it is sometimes necessary to contract with employees for extra hours of labor, in order to save and preserve the property of the employer; and by the decision of the court below, the plaintiff in error is deprived of his property without due process of law.

We rely upon all of these assignments of error, which express in various forms, the manner in which the statute under review violates the provisions of the Fourteenth Amendment.

We shall take up the questions raised herein by the assignment of errors in the following order:

The statute in question denies to the plaintiff in error the equal protection of the laws. It appears from sections of "The Labor Law," following the section under review, from statutes and decisions of other States, and from facts within the common knowledge of mankind, that there are many other persons engaged in the same line of business that are not subject to the restrictions and penalties of the statute.

The statute in question is not a reasonable exercise of the police power, and this branch of the case is discussed under two subdivisions:

(a) From the standpoint of the trade itself.

(b) From the standpoint of the decisions interpreting the exercise of the police power in con-

nection with the 14th Amendment of the United States Constitution.

A review of the history of the legislation leading up to the adoption in its present form, of the statute in question, showing that the first section is clearly intended as a labor law, and not an exercise of the police power of the State.

The case of Holden vs. Hardy (169 U. S. 366), distinguished from the case at bar.

In the Appendix to this brief will be found the following documents:

Sections 110, 111, 112, 113, 114 and 115 of Article VIII of "The Labor Law," Chapter 415, Laws of 1897 of the State of New York.

New York Penal Code, Section 384l, the statute under which the plaintiff in error was indicted and convicted.

Tables of various trades taken from the report of the Bureau of Labor of the State of New York for 1900, showing that the baker's trade is fully up to the average healthfulness of all trades; and also a table of trades affected by the inhalation of dust, etc., in which the baking trade is not included. Various high medical authorities which we have collected showing that the conclusions of Judge Vann are not warranted.

1. The statute in question denies to certain persons in the baking trade the equal protection of the laws.

The legislation must affect equally all persons engaged in the business of baking in order to con-

form to this provision of Article 14 of the United States Constitution.

It really affects but a portion of the baking trade, namely, employes "in a biscuit, bread or cake bakery, or confectionery establishment."

It will be seen that this provision covers two classes of workmen; namely, employes in biscuit, bread or cake bakeries and employes in confectionery establishments. The former are bakers; the latter are candy makers.

We are concerned only with the employes in biscuit, bread and cake bakeries. They do not by any means comprise all persons engaged in the business of baking. While no figures are obtainable, it is probably safe to say that at least one-third to one-half of the persons engaged in the baking business are not within the prohibition of the statute.

The employers themselves, a large proportion of whom personally engage in the baking trade, may work 24 hours a day if they are so minded. There are many small establishments where the proprietor does most of his own baking. There are also bakeries where a number of the employers are in partnership, and do all or mostly all of their own baking.

Then again, the employes themselves may work twenty-four hours a day, and they are not subject to punishment for so doing. It is only when the employer requires or permits an employe to work beyond the prescribed time that the penalty of the statute applies. If this is a health law, the employer himself should be restrained in the cause of public health, and the employe should not be allowed to work more than the lawful number of hours.

Then again, there is that very large class of bakers who are employed in pie bakeries, hotels, restaurants, clubs, boarding-houses and private

families, that are not within the terms of the statute. The number of bakers employed in these establishments are probably as numerous as those employed in biscuit, bread and cake bakeries. They are engaged in the same business, yet even the large restaurants where great quantities of biscuit, bread, cake and pie are turned out daily by journeymen bakers; the great hotels with their army of bakers, doing the same work; the clubs which are becoming more numerous every year, and where a considerable part of the business population of New York City take their noon-day meal; the great number of boarding houses, some of them employing a number of skilled bakers, the pie bakeries such as the Consumers Pie Baking Company, the New York Pie Baking Company, and many more; are none of these entitled to the "equal protection of the laws"?

Then there is the American housewife. Here is the real artist in biscuits, cake and bread, not to mention the American pie. The housewife cannot bound her daily and weekly hours of labor. She must toil on, sometimes far into the night, to satisfy the wants of her growing family.

It seems never to have occurred to these ungallant legislators to include within the purview of the statute these most important of all artists in this most indispensable of trades.

Another serious objection to the statute is that it affects all *employes* in biscuit, bread and cake bakeries. This would not mean the bakers alone but the drivers, cash girls, counter girls, bookkeepers and others. Is their trade one within the scope of the police power? And is it more dangerous to wait on a counter, keep books or drive for a baker than for a butcher or grocer? This feature alone is fatal to the statute.

In the recent case of Union Sewer Pipe Company

(184 U. S., 540), the discrimination in favor of agricultural products and live stock in the hands of the producer or raiser, in the Illinois Trust Act of June 20th, 1893, exempting them from the provisions of the statute, was held to render the act repugnant to the provisions of the United States Constitution, 14th Amendment, in respect of the equal protection of the laws. The different lines of business affected by the Trust Act in question are very numerous, yet the exception of two lines of business was held to invalidate the statute. Can it then be said that the statute in question, which only affects a part of the bakery business, is not repugnant to the Constitution in a much greater degree?

The reason why bakers employed in hotels, clubs, restaurants, boarding houses and private houses, are not protected by the provisions of the statute, is not hard to find. The necessities of these establishments are such that during busy seasons it is absolutely necessary to keep their bakers until the business of the day or the night is finished. It would be impossible for these bakers to get employments in such establishments unless they were willing to work as long as their services were required. Nor is it true that the bakers who are within the protection of the statute are as a rule, employed in less desirable and healthful surroundings than those who are not within the provisions of the statute. The average bakery of the present day is well ventilated, comfortable both summer and winter, and always sweet smelling. The other class of establishments, where cooks as well as bakers are employed, are as a rule, much more close and ill smelling than the bakeries. Many modern bakeries resemble factories in their general appearance. They have light comfortable places for their workmen, while the average kitchen even of the finest

hotels, in the cities at least, are usually underground, with great open ranges which make them intensely hot. The baker's oven, on the contrary, is made of brick, with walls several feet in thickness, generally lined with sand to keep the heat within the oven. The principle on which they are built is to keep the heat within the oven and prevent its radiating into the outside air. Inspection of any bakeries in any city will show that the average bakery is much more desirable as a place to work in than the average kitchen.

A valuable illustration of the fact that this statute offends against this clause of the 14th Amendment is found in some of the labor statutes of the several States. In California we find the following statute:

> "It shall be unlawful for any person engaged in the business of baking to permit or engage others in his employ, to engage in the labor of baking for the purpose of sale between the hours of six o'clock P. M. on Saturday and six o'clock P. M. on Sunday, except in the setting of sponge, preparatory to the night's work; provided, however, that restaurants, hotels and boarding houses may do such baking as is necessary for their own consumption."—Exparte Westerfield, 55 Cal. 550.

It will be seen that this statute is first general in its terms, and affects "any person engaged in the business of baking." It then excepts from the prohibition of the statute, "restaurants, hotels and boarding houses." This statute clearly recognizes the fact that we are here calling to the attention of the court; namely, that persons engaged in the occupation of baking are not confined to those employed in biscuit, bread and cake bakeries.

In the statute now before the Court we find

reference to other bakers than those in biscuit, bread and cake bakeries. In Section 111 it refers to rooms occupied as biscuit, bread, *pie* or cake bakeries; and the same words are used again in the latter part of Section 112. Section 113 speaks of the "bake-room of any bakery, *hotel* or *public restaurant.*" Here is a clear recognition of the carrying on of the baking trade in pie bakeries, hotels and public restaurants.

It seems therfore perfectly clear that this statute denies to a substantial part of the baking trade the equal protection of the laws. The employer of bakers in biscuit, bread and cake bakeries is subjected to heavy penalties of fine and imprisonment for requiring or permitting his men to work more than the prescribed number of hours, whereas employers of the same class of men doing the same work throughout the state are exempt from the provisions of the statute. This brings the statute clearly within the decisions under this part of the 14th Amendment.

2. The authorities upon this subject are uniform and controlling in the case at bar.

It must be remembered that the Constitution itself says that no state shall "deny to any person within its jurisdiction the equal protection of the laws." It does not say, "no considerable number of persons," but "any person." And this plaintiff in error may appeal with confidence to the supreme law of the land against this law which singles out a certain number of men employing bakers, and permits all others similarly situated, including

many who are competitors in business, to work their employes as long as they choose.

Professor Freund, in his work on the Police Power, says at p. 633:

> "Equality is for the purpose of controlling the validity of legislation, a more definite conception than liberty, for it has the advantage of being measurable. Government cannot be conceived without an infringement of liberty, while the claim of equality is consistent, in idea at least, with almost any form of governmental power.

Again, at page 635, he says:

> "It is an elementary principle of equal justice, that where the public welfare requires something to be given, or done the burden be imposed or distributed upon some rational basis, and that no individual be singled out to make a sacrifice for the community."

This Court has said that the guarantee of the equal protection of the law means "that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and in like circumstances."

Missouri v. Lewis (101 U. S. 22, 31).

In the case of Connolly vs. Union Sewer Pipe Company, (184 U. S. 540) Mr. Justice Harlan says, at page 558:

> "The State has undoubtedly the power, by appropriate legislation, to protect the public morals, the public health and the public safety; but if, by their necessary operation, its regulations, looking to either of those ends, amount

> to a denial to persons within its jurisdiction of the equal protection of the laws, they must be deemed unconstitutional and void."

In the case of Barbier v. Connolly, (113 U. S. 27) Mr. Justice Field says, at page 31:

> "The Fourteenth Amendment in declaring that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property; but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights, that all persons should be equally entitled to pursue their happiness and acquire and enjoy property, that they should have like access to the courts of the Country, for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one *except as applied to the same pursuits by others under like circumstances*; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is subscribed to all for like offences."

Judge O'Brien, in his dissenting opinion, says (Record, Folios 58, 61):

> "Work of the same general character is exacted from cooks and domestic servants in practically all the private houses in the land,

> and to a great extent, in hotels, restaurants and other public places. It would be absurd to say that all, or even the greater part of the biscuit, bread, cake and confectionery consumed in this State comes from what are called bakeries. The law does not even apply to bakers in small towns and villages who do their own work. It applies only to bakers who find it necessary to employ labor, and they alone are subjected to criminal prosecution in case they *permit* the servant to work more than ten hours in a day, even though the servant is willing and is given extra compensation. The baker is forbidden under the penalty of fine and imprisonment to contract or agree with his servant upon the hours of labor in such way as would be mutually beneficial; but his business is practically regulated by statute."

Confirming the views of Judge O'Brien we find in the report of the New York Factory Inspector's Bureau to the Legislature of that State, of 1897, that the number of bakeries inspected during that year was 3828, of which number more than one-half employed but two, one and no journeyman bakers. It is evident that in bakeries of this character the employer either does his own baking without any help, or he has the aid of members of his family, or in some cases, one or two bakers additional to his own labor. The members of the families of these small bakers cannot be classed as employes, and yet they do the same work, and like the employer himself, are not subject to the provisions of the statute.

In discussing the inequality of the Illinois Trust Act the Court calls attention to the freedom accorded by the law to agriculturists and live stock raisers through the exception allowed in their favor

and to the possibilities of the exercise of that freedom in direct opposition to and subversion of the general scheme of the act as intended by the Legislature. And this although the exception equally applied to all members of the agriculturists and live stock raisers as a class, while in the case at bar, the statutory restraints are limited to a small part of the members of the class sought to be effected by it.

If the exception accorded to two classes of trade by the Illinois Trust Act was deemed sufficient to hold the burden imposed upon a number of other trades and callings, not at all affected by the trade competiton of those excepted, as unequal, how much more so must this principle apply to the case at bar where the inequality extends to members of a class and where the exemptions, which in effect are enjoyed by large numbers of bakers, accord them a distinctive economic advantage over those subjected to the rigors of the law.

The principle of equality means that equal conditions must receive equal treatment (Freund on Police Power, page 633).

The Stock Yards Act of Kansas attempted to prescribe rules and rates for the Kansas City Stock Yards Company exempting numerous small stock yard owners. The statute also conferred certain exclusive stock yard privileges upon the company as against the other dealers. This act was declared unconstitutional. Cotting vs. Goddard, 183 U. S. 79-92.

On page 282, Judge Cooley in his book on Constitutional Limitations, says: "And if a corporation has power to prohibit the carrying on of dangerous occupations, within its limits, a by-law which should permit one person to carry on such an occupation and prohibit another, who had an equal right from pursuing the same business, or which

should allow the business to be carried on in existing buildings but prohibit the erection of others for it, would be unreasonable."

A San Francisco ordinance required every male person imprisoned in the county jail to have his hair cut to the uniform length of one inch. Held invalid as being directed specially against the Chinese. Tin Sing vs. Washburn, 20 Cal. 5344; see also Yick Wo vs. Hopkins, 118 U. S. 356.

Classification must be based upon some difference bearing a reasonable and just relation to the act in respect to which the classification is attempted, but no mere arbitrary selection can ever be justified by calling it classification. The fact that all persons and corporations brought under the influence of an act, are subjected to the same liabilities and duties under similar circumstances, is sufficient to sustain an act as against the charge of the denial of the equal protection of the laws. Atchison, Topeka & Santa Fe R. R. Co. vs. Matthews, 174 U. S. 105. Class legislation of the character of the act in issue enacted by the States which discriminates in favor of one person or set of persons and against another or others is forbidden by the Fourteenth Amendment to the United States Constitution. Gulf C. & F. R. Co. vs. Ellis, 165 U. S. 150; Cotting vs. Kansas City S. Y. Co., 183 U. S. 79; Connolly vs. U. S. P. Co. 184 U. S. 540; People vs. Orange County Road Construction Co., 175 N. Y. 87-90.

In Yick Wo vs. Hopkins, 118 U. S. 356, a case where a municipal ordinance of San Francisco designed to prevent Chinese from carrying on the laundry business, was adjudged void, the Court says: "This Court looked beyond the mere letter of the ordinance to the condition of things as they existed in San Francisco, and saw that under the

guise of regulation an arbitrary classification was intended and accomplished.

See also the language of Mr. Justice Matthews in Yick Wo vs. Hopkins (118 U. S. 356, 369) "the equal protection of the laws is a pledge of the protection of equal laws."

Gibbons vs. Ogden (9 Wheat., 1, 210).

Sinnot vs. Davenport (22 How. 227, 243).

Missouri vs. Lewis (101 U. S. 22, 31).

Butcher's Union Co. vs. Crescent City Co. (111 U. S. 746).

Barbier vs. Connolly (113 U. S. 27, 31).

Yick Wo vs. Hopkins (118 U. S. 356, 369).

Gulf C. & F. R. Co. vs. Ellis (165 U. S. 150).

Missouri K. & T. R. Co. vs. Haber (169 U. S. 613, 626).

Cotting vs. Kansas City S. Y. Co. (183 U. S. 79).

Connolly vs. Union Sewer Pipe Company (184 U. S. 540).

People vs. Orange County Road Cons. Co. (175 N. Y. 84).

3. The Statute in Question is Not a Reasonable Exercise of the Police Power.

We will discuss this branch of the case under the following subdivisions:

(a) From the standpoint of the trade itself.

(b) From the standpoint of the decisions interpreting the exercise of the police power in connection with the 14th Amendment of the United States Constitution.

(a) The business of the baker is one of the oldest known trades.

The trade of the baker in years gone by, when the kneading of the "dough" or "sponge" was done by hand, may have caused some flour dust. But the contention that flour dust is at all unhealthful is disputed by high medical authority. It is doubtless also true that the quarters of the bakers have in the past been highly unsanitary. Regulations made by law for the purpose of bringing about sanitary conditions in bakeries, by providing for a certain amount of air space and ventilation, by excluding domestic animals from premises where baking is conducted, by forbidding sleeping apartments, privies, etc., from opening into the bake-room, are all provisions clearly within the police power, and highly beneficial to the trade and to the public.

The trade of the baker has, however, been much changed in more recent times, by the introduction of machinery into the preparation of the dough. The biscuit bakeries are conducted on a very large scale, all of the main processes are conducted by machinery, the work is usually done in large, well lighted buildings where the trade of the baker is absolutely sanitary, and as healthful as the best conditions and pleasant surroundings can make them. All of the factories of the American Biscuit Company and the National Biscuit Company are of this character. The bakery of the National Biscuit Company on 10th Avenue, New York City, is the largest bakery in the world and covers two city blocks. Its employes number about one thousand. The same thing is true of the large bread bakeries scattered to-day through our great cities. Large buildings, with many employes are given up wholly to the making of bread, which is distributed by wagons to the grocery stores and private houses. These great factories are models of cleanliness and healthfulness, yet they are within the terms of the act.

The ordinary bakery has two shifts of men—the bread bakers who work at night, and the cake bakers who work in the day-time. In almost every bakery of this character in our large cities, which has any considerable amount of business, mixing machines are installed for making the dough or "sponge." These mixing machines absolutely remove any possibility of flour dust filling the air. The cake bakers, who make all kinds of fancy cakes, pies, etc., do not raise dust in their operations. The most cursory examination of bakeries in any considerable city in the country, will show that for comfort, ventilation and healthful surroundings the baker's trade compares favorably with that of any other important trade. The making of dough may occupy an hour or two hours of the day's work. The rest of the day is occupied in moulding the dough into bread and rolls and baking it. And the mixing even in small shops, is now done mainly by machinery. How then can the shortening of hours affect the question of flour dust?

The statute in question goes far beyond any previous attempt to regulate the ordinary pursuits of mankind by legislative enactment under the guise of the police power, if indeed, the Legislature ever intended this to be a *health* regulation. Considering the statute from the standpoint of its reasonableness as a health regulation, we therfore urge that a very large proportion of the bakers affected by the statute are employed in bakeries of the classes above referred to, where their surroundings cannot be reasonably objected to on the ground which led a majority of the Court of Appeals of New York to sustain this statute. Why should the employes of the National Biscuit Company have laws enacted governing their hours of labor on the ground that their occupation is unhealthful? In like manner, why should the proprietors of one of

our great bread baking establishments be arrested and imprisoned for permitting their men to work more than sixty hours per week, on the ground that their health is endangered, or the health of the public is endangered by the nature of their business? Why should the numerous proprietors of first class baking establishments throughout our great cities, whose bakeries are well ventilated, clean and comfortable in every respect, with mixing machines to handle the dough, and improved appliances of every kind, be subjected to this alleged "health" law?

In so far as the baker works under unsanitary conditions, in small and poorly ventilated bakeshops, his interests are protected by the other sections of this law. A proper enforcement of the real health provisions of the statute will give him healthful and desirable surroundings. Where these ends are attained the Legislature has gone as far in its interference with the private business of the baker as a reasonable interpretation of the police powers of the State will admit.

It was never the intention of our law-makers nor the intention of the people in adopting the Federal and State Constitutions, to erect a government so paternal in its character that the treasured freedom of the individual and his right to the pursuit of life, liberty and happiness, should be swept away under the guise of the police power of the State. And while it is difficult to define the extent of the police powers of the States, this court should not, under the plea of protecting the powers of the various States to guard the lives, morals, welfare and safety of its citizens, permit the States, little by little, to break down and sweep away the most cherished rights of American citizenship. Each new attempt by the States to interfere with the contract and property

rights, and freedom to exercise a trade or calling by the citizen, should be most closely and jealously scrutinized by this court; and unless the justification of the laws was reasonably clear and apparent, the statute should be declared unconstitutional. To resolve every doubt in favor of the police powers of the State, instead of resolving them in favor of the liberty of the individual would soon lead to absurd conclusions that are more consistent with the autocratic governments whose day seems rapidly passing, than to the great Republic whose boast has been that the Federal Constitution secured its liberties for all time against encroachment from any source.

If this law can be sustained because a few bakers may still be using old fashioned methods, whereby for a few minutes in each day they may possibly breathe a little flour dust into their lungs, why should not the doctor be protected because he is brought in contact by his trade with contagious diseases? Or the lawyer, because his occupation requires him to damage his eye-sight by poring over badly printed law books and decisions of the courts? Or the Wall Street operator because he is kept in a condition of undue nervous excitement by the gambling features of his business?

Judge Vann, of the New York Court of Appeals, in his concurring opinion in this case, says (Record, Folio 48): "I do not think the regulation in question can be sustained unless we are able to say from common knowledge that working in a bakery and candy factory is an unhealthy employment. If such an occupation is unhealthy the Legislature had the right to prohibit employers from requiring or permitting their employes to spend more than a specified number of hours per day or week in the work, because such a command would be in the interest of public health and would pro-

mote the general welfare. As in the Jacobs case we took judicial notice of the nature and qualities of tobacco, so in this case we may take judicial notice of the effect of very fine particles of flour and sugar when inhaled into the lungs from the heated atmosphere of manufactories of bread and candy. Necessarily in considering the subject we may resort to such sources of information as were open to the Legislature." After quoting a number of medical authorities, census reports and encyclopedias, some of them evidently referring to places where the flour was ground, others based entirely upon the unhealthfulness of the apartments in which the trades are carried on, and others showing that the baker's trade was about on the general average of healthfulness, he concludes as follows (Record, Folio 53), "The evidence, *while not uniform,* leads to the conclusion that the occupation of a baker or confectioner is unhealthy and tends to result in diseases of the respiratory organs. * * * Such legislation under such circumstances is a health law, and is a valid exercise of the police power."

Judge O'Brien, in his dissenting opinion in this case says (Record, Folio 61):

"What possible relation or connection the number of hours the workmen are permitted to work in the bakery has, or can have to the healthful quality of the bread made there, is quite impossible to conceive. * * * There is nothing on the face of the law or in its manifest operation to show that it has any relation to the public health."

These opinions are confirmed by the common knowledge of mankind. Flour and meal are used in all families. Has any member of the court found flour dust in the air of his kitchen? On entering the kitchen, one may see the steam from the kettle, or scent the odor of the boiled dinner, but who has

been conscious of the presence of this death dealing flour dust?

As Judge Bartlett points out in his dissenting opinion (Record, Folio 67), the commodities of the baker are "more calculated to produce dyspepsia in the consumer than consumption in the producer."

(b.) This statute cannot be sustained unless it can be justified as a proper exercise of the police power of the State of New York.

Blackstone defines the public police as the due regulation and domestic order of the kingdom, whereby the inhabitants of a state, like members of a well governed family are bound to conform in their general behavior to the general rules of propriety, good neighborhood and manners, and to be decent, industrious and inoffensive in their respective stations. 4 Bl. Com. 162.

Police is in general a system of precaution, either for the prevention of crime or calamities. The power is exercised for the prevention of offenses, calamities, diseases, for charity, interior communication, police of public amusements, for recent intelligence and for registration. Edinburgh edition of works of Jeremy Bentham, part IX. 157.

"The police of a state in a comprehensive sense, embraces its system of internal regulation, by which it is sought, not only to preserve public order and to prevent offenses against the State, but also to establish for the intercourse of the citizen with citizens those rules of good manners and good neighborhood, which are calculated to prevent a conflict of rights, and to insure to each the uninterrupted enjoyment of his own, so far as it is reasonably consistent with like enjoyment of others. Cooley Con. Lim. 572.

Kent says: But although property be thus protected, it is still to be understood that the law given has the right to prescribe the mode and manner of

using it, so far as it may be necessary to prevent the abuse of the right to the injury to others or of the public. 2 Kent's Comm. 340.

In the Slaughter House Cases (16 Wall. 36, 37), Field, J., says: "All sorts of restrictions and burdens are imposed under the police power, and, when these are not in conflict with any constitutional prohibitions or fundamental principles, they cannot be successfully assailed in a judicial tribunal. * * * But under the pretense of prescribing a police regulation, the state cannot be permitted to encroach upon any of the just rights of the citizen, which the constitution intended to secure against abridgement."

In re Jacobs (98 New York, 98), Judge Earl says, at page 108:

"The limit of the power cannot be accurately defined and the Courts have not been able or willing definitely to circumscribe it. But the power, however broad and extensive, is not above the constitution. When it speaks, its voice must be heeded. It furnishes the Supreme Law, the guide for the conduct of legislators, judges and private persons, and so far as it imposes restraints, the police power must be exercised in subordination thereto."

Again at page 110, he says:

"These citations are sufficient to show the police power is not without limitations and that in its exercise, the Legislature must respect the great fundamental rights guaranteed by the Constitution. If this were otherwise, the power of the legislature would be practically without limitation. In the assumed exercise of the police power in the interests of the health, the welfare or the safety of the public, every right of the citizen might be invaded and

every constitutional barrier might be swept away. *Under the mere guise of the police regulations, personal rights and private property cannot be arbitrarily invaded, and the determination of the Legislature is not final and conclusive.*"

Tiedemann on the Limitations of Police powers, says:

"Secion 178. Laws, therefore, which are designed to regulate the terms of hiring in strictly private employments, are unconstitutional, because they operate as an interference with one's natural liberty in a case in which there is no trespass upon private right and no threatening injury to the public. And this conclusion not only applies to laws regulating the rate of wages of private workmen, but also any other law whose object is to regulate any of the terms of hiring, such as the number of hours of labor per day, which the employer can demand. There can be no constitutional interference by the state in the private relation of master and servant except for the purpose of preventing frauds and trespasses."

See also Freund on Police Power, page 534.

"To prevent an abuse of the police power, for the alleged protection of the health or safety or the alleged prevention of fraud, the Court must be allowed to judge whether restrictive measures have really these ends in view. A remote and slight danger should not be recognized as a sufficient ground of restriction, and the provisions of the law should be scrutinized in order to see whether they in reality tend to effectuate their object."

On the question of the reasonableness of an act, to authorize it under the police power, the same author says on page 58 of his book on Police Power:

"If reasonableness is understood to mean well adapted to the end in view, there is practically no judicial claim to control the judgment of the legislature of what is reasonable. The Courts are certainly emphatic in their assertion that they have nothing to do with the wisdom or expediency of legislative measures. The question of judicial power practically confines itself to a third meaning of reasonableness, namely, moderation and proportionateness of means to end."

Where the ostensible object of an enactment is to secure the public comfort, welfare or safety, it must appear to be adapted to that end, it cannot invade the rights of persons and property under the guise of the police regulation, when it is not such in fact. Eden vs. People, 161 Ill. 296. Ex Parte Jentsch 112 Cal. 468, Ritchie vs. People, 155 Ill. 98, Lake View vs. Rose Hill Cemetery Co. 70 Ill. 191.

In re Jacobs (98 N. Y. 98) arose under a statute forbidding the making of cigars in tenement houses. There was no question but that this was intended by the legislature to be a health regulation. The court was unanimous that the statute was unconstitutional and not a proper exercise of the police power. It will be noticed that the court speaks of the *baker* as one of the "innocuous trades" that do not fall within the police power.

Judge Earl says, at page 114:

Under the guise of promoting the public health the Legislature might as well have banished cigar-making from all the cities of the State, or confined it to a single City or Town, or have placed under a similar ban the trade of a *baker,* of a tailor, of a shoe maker, of a wood carver, or of any other of the innocuous trades carried on by artisans in their own homes. The power would have been the same,

and its exercise, so far as it concerns fundamental, constitutional rights, could have been justified by the same arguments. Such legislation may invade one class of rights today and another tomorrow, and if it can be sanctioned under the Constitution, while far removed in time we will not be far away in practical statesmanship from those ages when governmental prefects supervised the building of houses, the rearing of cattle, the sowing of seed and the reaping of grain, and governmental ordinances regulated the movements and labor of artisans, the rate of wages, the price of food, the diet and clothing of the people, and a large range of other affairs long since in all civilized lands regarded as outside of governmental functions. Such governmental interferences disturb the normal adjustments of the social fabric, and usually derange the delicate and complicated machinery of industry and cause a score of ills while attempting the removal of one."

The Court further says, "When a health law is challenged in the Courts as unconstitutional on the ground that it arbitrarily interferes with personal liberty and private property without due process of law, the Courts must be able to see that it has at least in fact some relation to the public health, that the public health is the end actually aimed at, and that it is appropriate and adapted to that end."

People vs. Marx (99 N. Y. 377) arose under an act prohibiting the manufacture or sale of substitutes for butter or cheese. It was unanimously held unconstitutional because not limited to unwholesome or simulated substances. Judge Rapallo says, at page 387:

"Equal rights to all are what are intended to be secured by the establishment of constitutional limits to legislative power, and impartial tribunals to enforce them."

In the case of People vs. Gillson (109 N. Y. 389) an act prohibiting the sale of any article of food upon the inducement that something would be given to the purchaser as a premium or reward (Laws 1887, ch. 691) was held to be an unauthorized invasion of the rights of property and an improper exercise of the police power of the State. It was expressly declared in that case that the courts must be able to see upon a perusal of the enactment that there is some fair, just and reasonable connection between it and the public good, and that unless such relation exists the statute cannot be upheld as an exercise of the police power.

Judge Peckham, writing the opinion of the court in the Gillson case, says, at page 398:

"At the same time it must be remembered that the Constitution is the supreme law of the land, and that when an act of the Legislature properly comes before the court to be compared by it with the fundamental law, it is the duty of the court to declare the invalidity of the act if it violates any provision of that law."

Again, on page 399, he says:

"Liberty, in its broad sense, as understood in this country, means the right, not only of freedom from servitude, imprisonment or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation. * * *

"It is quite clear that some or all of these fundamental and valuable rights are invaded, weakened, limited or destroyed by the legislation under consideration. It is evidently of that kind which has been so frequent of late, a kind which is meant to protect some class in the community against the

fair, free and full competition of some other class, the members of the former class thinking it impossible to hold their own against such competition, and therefore flying to the Legislature to secure some enactment which shall operate favorably to them or unfavorably to their competitors in the commercial, agricultural, manufacturing or producing fields."

On page 400, he says:

"This brings us to the consideration of the question whether the act is valid as a proper exercise of what is, by way of classification, called the police power of the State. That power has never yet been fully described nor its extent plainly limited, further at least, than this; it is not above the Constitution, but it is bounded by its provisions, and if any liberty or franchise is expressly protected by any constitutional provision it cannot be destroyed by any valid exercise by the Legislature or the executive of the police power."

Again on page 403, he says:

"It is further argued, however, that the act is valid as a health law, a regulation of trade in food, and to prevent dealing in impure, unwholesome and adulterated food. The same principles apply here as have already been stated, i. e., there must be some fair and reasonable relation of means to end, which courts can see and admit the force of. We think it clear there is no such relation here. We think the act has not the slightest tendency to accomplish the alleged purpose."

In the case of People vs. Biesecker (169 N. Y. 53) a statute forbidding the use of preservatives in dairy products was held void. Judge Cullen says at page 60, "while it may regulate, it may not destroy the industry."

In declaring unconstitutional Chapter 931 of the Laws of 1896, which required all convict made goods to be labeled "convict made" before they could be exposed for sale and which act was sought to be sustained under the police power as a measure for the public welfare, Judge O'Brien writing the majority opinion, gives expression to these principles.

"A law which interferes with property by depriving the owner of the profitable and free use of it or hampers him in the application of it for purposes of trade or commerce, or imposes conditions upon the right to hold or sell it, may seriously impair its value against which the constitution is a protection. The fact that legislation hostile to the rights of property assumes the guise of a health law or a labor law will not save it from judicial scrutiny since the courts cannot permit that to be done by indirection which can not be done directly. People vs. Hawkins, 157 N. Y. 1.

The last case decided in New York which is directly in point is People vs. Beattie (96 App. Div. 383) decided in July, 1904. It arose under an act providing for the examination and licensing of horseshoers. The court declared it unconstitutional as an improper exercise of the police power. Judge Hatch writing the opinion of the Court, says at page 390:

"To undertake the regulation of these subjects would inject into the body politic a paternalism which is repugnant to free institutions."

And again at page 3991:

"We are of opinion, therefore, that this law arbitrarily interferes with personal liberty and private property without due process of law, for which reason it is invalid."

The following decisions of the New York Court of Appeals interpreting the "Labor Law" of that State are not directly in point, but are important expressions of the views of that court on some branches of the case at bar.

The earliest case under the Labor Law which came before the New York Courts was that of People ex rel. Rodgers vs. Coler (166 N. Y. 1). That was an application by a contractor with the city to compel the payment of his claim. It was resisted on the ground that the contractor had failed to comply with the Labor Law so far as it required payment by him to his employees of the prevailing rate of wages. It was held that the Labor Law, so far as it required that in contracts with the municipality the contractor should agree to pay his employees the prevailing rate of wages, was unconstitutional and void, and that the contractor was entitled to payment, though he had failed to comply with that provision.

People vs. Orange County Road Construction Company (175 N. Y. 84), was a case arising under the Penal Code which made any one contracting with the state or a municipality who should require more than eight hours work of an employee guilty of a misdemeanor and punishable by a fine. As is pointed out in the opinion rendered in the case the statute did not assume to punish a contractor for violating his contract but for doing the prohibited act, i. e., requiring more than eight hours labor from an employee, regardless of whether or not he had agreed by his contract not to require such a term of labor and even though his contract might have been made years before there was any legislation on the subject. It was held that this penal enactment could not be sustained as a police or health regulation because of the arbitrary distinc-

tion drawn between workmen employed on a state or municipal work and those performing similar labor under other contracts.

Ryan vs. City of New York (177 N. Y. 271), arose under the Labor Law, the plaintiff, an employee of the city, suing for the difference between the wages actually paid him by the city and the prevailing rate of such wages. It was there held by a majority of the court that the direction of the Labor Law that the city should pay its employees the prevailing rate of wages was constitutional and imposed upon the city officers the duty of fixing wages at the prevailing rate, but that the acceptance by the employee of a different rate and his continuance in the employment of the city at such rate constituted a waiver of all claim on his part for greater compensation.

The last "Labor Law" decision in New York was People ex rel Cossey vs. Grout (179 N. Y. 417). This was a case where the relator agreed in his contract with the city not to employ his men more than eight hours per day. The relator prevailed on the ground that the law was an unconstitutional invasion of the rights of the municipality. We cite the case for the purpose of calling attention to the statement of Judge O'Brien at page 434, where he shows the ground of dissent of three judges of that court in the Lochner case. It is quite true that this court has recently held that the legislature could make it a criminal offense for a baker to permit his workmen to work more than ten hours in the day, but the struggle in that case was to make what some of us thought was a labor law a health law and so within the police power."

No case yet decided by the Supreme Court of the United States would warrant the affirming of the decision of the New York Court of Appeals in this

case. We have elsewhere pointed out that Holden vs. Hardy (169 U. S. 366) was clearly distinguishable from this case. The occupation of mining has ever been held properly within the police powers; while a decision pronouncing the bakers trade subject to arbitrary regulation under the police power, would mean that all trades will eventually be held within the police power; and the 14th Amendment will become mere idle words. We feel confident of this as we show by the tables in the "Appendix" of this brief, that the baker's trade is about on the general average of healthfulness of all trades.

We cite briefly some of the leading cases decided by this Court.

In Butcher's Union Company against Crescent City Company (111 U. S. 746), Mr. Justice Field says, on page 757: "Among the inalienable rights as proclaimed in the Declaration of Independence is the right of men to pursue their happiness, by which is meant the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give them their highest enjoyment. The common business and calling of life, the ordinary trades and pursuits, which are innocuous in themselves and have been followd in all communities from time immemorial, must, therefore, be free in this country to all alike upon the same conditions. The right to pursue them, without let or hindrance, except that which is applied to all persons of the same age, sex, and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright."

The case of Munn vs. Illinois (94 U. S. 79) is not

an authority for the act of the New York legislature here complained of. In that case it was held that an occupation whose regulation was necessary "for the public good" was within the police power; but as Mr. Justice Field points out, it must be a case where one undertakes "a public employment, with special privileges which the State alone can confer upon him," and the warehousing of grain having become a "virtual monopoly" gave the business a public character that warranted its regulation.

The words of Chief Justice Chase in the case of Calder vs. Bull (3 Dallas 386, 388), have never been questioned by this court and are still authority for our contention in this case that the legislature is not omnipotent. He says:

"I cannot subscribe to the omnipotence of the State Legislature, or that it is absolute and without control; although its authority should not be expressly restrained by the constitution or fundamental law of the state. * * * The nature and ends of legislative power will limit the exercise of it. This fundamental principle flows from the very nature of our free republican governments, that no man should be compelled to do what the laws do not require; nor to refrain from acts which the law permit. There are acts which the federal or state legislature cannot do without exceeding their authority. There are certain vital principles in our free repulican governments, which will determine and overrule an apparent and flagrant abuse of legislative power; as to authorize manifest injustice by positive law; or to take away that security for personal liberty or private property, for the protection whereof government was established. * * * A few instances will suffice to explain what I mean. A law that punished a citizen for an innocent ac-

tion, or, in other words, for an act, which when done, was in violation of no existing law; a law which destroys or impairs the lawful private contracts of citizens; a law that makes a man a judge in his own cause; or a law that takes property from A and gives it to B; it is against all reason and justice for a people to entrust a legislature with such powers; and therefore it cannot be presumed that they have done it. * * * It (the legislature) cannot change innocence into guilt, or punish innocence as a crime, or violate the right of antecedent lawful private contract; or the right of private property."

In United States vs. Martin (94 U. S. 400, 403), this court construed Section 3738 of the Revised Statutes, providing that eight hours shall constitute a day's work for employes of the Government. It was there held that this statute was "in the nature of a direction from a principal to his agent; that eight hours is deemed to be a proper length of time for a day's labor, and that his contracts shall be based upon that theory. It is a matter between the principal and his agent, in which a third party has no interest." (p. 404.)

The court also says:

"It does not establish the price to be paid for a day's work. Skilled labor necessarily commands a higher price than mere manual labor, and whether wages are high or low depends chiefly upon the inquiry whether those having labor to bestow are more numerous than those who desire the service of the laborer. * * *

"The statute does not provide that the employer and the laborer may not agree with each other as to what time shall constitute a day's work. There are some branches of labor connected with furnaces, foundries, steam or gas works, where the labor and

the exposure of eight hours a day would soon exhaust the strength of a laborer and render him permanently an invalid. The government officer is not prohibited from knowing these facts, nor from agreeing, when it is proper, that a less number of hours than eight shall be accepted as a day's work. Nor does the statute intend that, where out-of-door labor in the long days of summer may be offered for twelve hours at an uniform price, the officer may not so contract with a consenting laborer."

This decision clearly puts this court on record, as against the arbitrary regulation of innocuous trades by act of the Legislature.

The case of United States against Martin is similar in principle to People vs. Phyfe (136 N. Y. 554).

In the case of Henderson vs. Mayor of New York (92 U. S. 259), a State law regulating the landing of passengers was held unconstitutional and not within the police powers.

The case of Petit vs. Minnesota (177 U. S. 164), is also distinguishable from the case at bar. A Sunday law which in effect made the determination whether a given occupation was an act of charity or necessity a question of fact in all trades, except barbers. Sunday laws have universally been held within the police powers. This statute is a declaration that the barber's trade does not involve work of necessity or charity.

We regard the decision of this Court in the case of Atkin vs. Kansas (191 U. S. 207, 224), as favorable to our contentions in the case at bar. The statute there under review regulated the hours of labor on public works. It did not interfere with the right of private contract. Mr. Justice Harlan calls attention to this and says "Its action touching such a matter is final so long as it does not, by its

regulations, infringe the personal rights of others, and that has not been done."

Wynehamer vs. People (13 N. Y. 378); In re Jacobs (98 N. Y. 98); People vs. Marx (99 N. Y. 377); People vs. Gillson (109 N. Y. 401); People vs. Budd (117 N. Y. 15); Health Dept. vs. Rector (145 N. Y. 32); Colon vs. Lisk (153 N. Y. 188) People vs. Hawkins (157 N. Y. 1); People ex rel. Tyroler vs. Warden of Prison (157 N. Y. 116); People ex rel. Rodgers vs. Coler (166 N. Y. 1); People vs. Biesecker (169 N. Y. 53); People vs. Orange Co. Road Cons. Co. (175 N. Y. 84); Ryan vs. City of New York (177 N. Y. 271); People ex rel. Cossey vs. Grout (179 N. Y. 417); Calder vs. Bull (3 Dallas 386); Slaughter House Cases (16 Wall. 36); Henderson vs. Mayor of New York (92 U. S. 259); Munn vs. Illinois (94 U. S. 79); Missouri vs. Lewis (101 U. S. 22); Butchers' Union Co. vs. Crescent City Co. (Ill. U. S. 746); Barbier vs. Connolly (113 U. S. 27); Holden vs. Hardy (169 U. S. 366): Pettit vs. Minnesota (177 U. S. 164); Connolly vs. Union Sewer Pipe Co. (184 U. S. 540); Atkin vs. Kansis (191 U. S. 207); Cook vs. County of Marshall (Decided by this Court January 16, 1905).

In the other State Courts legislation of the kind in issue has been almost uniformly declared invalid.

Sawyer vs. Davis (136 Mass. 239, 243); Eden vs. People (161 Ill. 296); Ritchie vs. People (155 Ill. 98); Ex parte Kuback (85 Cal. 274); Godcharles vs. Wigeman (113 Penn St. 431); State vs. Goodwill (33 West. Va. 179); Leep vs. St. Louis R. R. Co. (58 Ark. 407); Low vs. Rees Pub. Co. (41 Neb. 127); Exparte Westerfield (55 Cal. 550).

The latter case is directly in point and pronounces the bakers' trade not one subject to the police power of the state.

In the Westerfield case, a California statute provides: "It shall be unlawful for any person engaged in the business of baking, to engage or permit others in his employ to engage in the labor of baking for the purpose of sale, between the hours of six o'clock p. m. on Saturday and six o'clock p. m. on Sunday, except in the setting of sponge preparatory to the night's work; provided, however, that restaurants, hotels and boarding houses may do such baking as is necessary for their own consumption"; the act is made a misdemeanor ,punishable by fine and imprisonment, or both. Held void as a special law. Myrick, J.: "The act purports, according to its title, to be an act to provide for a day of rest. Instead of pursuing that intent, it goes on to say that certain acts, viz., the labor of baking for the purpose of sale, if performed by certain persons, viz., persons 'engaged in the business of baking for the purpose of sale' shall constitute a crime and shall be punished. The employers are not to be punished. This is special legislation. A certain class is selected. * * * The baking of bread is in itself lawful and necessary." McKinstry, J., concurring: "The baking of bread is not only lawful and necessary, but we will take notice that there is nothing so peculiar in the occupation as that those engaged in it require—as a sanitary measure, or for the protection of their morals---a period of rest not required by those engaged in many other employments. A general law must include within its sanction all who come within its purpose and scope. It must be as broad as its object."

From all of the decisions on the exercise of the police power we find its exercise fairly tested by the questions set forth in Section 143 of Freund on Police Power.

"The questions which present themselves in the

examination of a safety or health measure are: Does a danger exist? Is it of sufficient magnitude? Does it concern the public? Does the proposed measure tend to remove it? Is the restraint or requirement in proportion to the danger? Is it possible to secure the object sought without impairing essential rights and principles? Does the choice of a particular measure show that some other interest than safety or health was the actual motive of legislation?"

Tested by these questions we believe the constitutionality of the case at bar cannot be maintained.

4. The statute in question was never intended as a health provision but was purely a labor law. This is indicated by the facts leading up to the adoption of this statute by the New York legislature.

The classic country of modern factory legislation, England, brought forward the first law regulative of conditions of bakeshops, that we are able to discover, to wit, the "Bakehouse Regulation Act" passed by Parliament in 1863 (26, 27 Vict. Ch. 40). This act was the result of an investigation of a Parliamentary commission. The law forbids persons under the age of eighteen to work between the hours of 6 p. m. and 5 a. m. and apprentices to work in excess of 10 hours per day.

In addition thereto it provides for a number of sanitary rules similar to those of the New York Labor Law, but it in no wise seeks to interdict the operation of bakeshops or restrict the hours of labor of the adult employees. The Factory Act

of 1883, designed as "Factory and Workshop Act, 1883" amended the Bakehouse Act of 1863 in several particulars in regard to the location and maintenance of privies, water closets, sewage, drains and pipes and other strictly sanitary matters, but in no wise sought to interfere with the hours of labor of employees.

As our factory legislation in America was largely borrowed from that of England, so did the bakery legislation of the several states take its impetus from the precedents established by our cousins across the sea.

The first demand for a ten hour work day for bakers in our country, appears to have been made by resolution adopted in a mass meeting of bakers of the City of New York, in Irving Hall, on April 23d, in 1887. In the same year a Bill made its appearance in the New York Legislature promoted by George G. Block, the Secretary of the Journeymen's Bakers Union which read as follows:

> Section 1. A day's work in a bakery, shop or other place in which articles of food are manufactured, shall not exceed ten hours per day.
>
> Section 2. This act shall take effect immediately.

See Baker's Journal, New York City, May 8th, 1895. This bill was rejected by the Legislature. Five years later in 1892, the Commissioner of Labor Statistics of the State of New York, with the aid of the Organization of the Journeymen Bakers, made an investigation of the conditions of labor and the construction of the bakeshops of New York City, which resulted in an agitation of the Journeymen Bakers renewing the struggle for a ten hour law for bakers and a number of sanitary pro-

visions which as stated above were largely borrowed from the English Bakehouse Act.

Report of New York State Bureau of Labor Statistics of 1892, Volume III.

In 1895 a Bill was introduced into the Legislature entitled "An Act to regulate the Manufacture of Flour and Meal Food Products." It became a law as Chapter 548 of the Laws of 1895. It was the first Baker's Law passed in any country of the world, which arbitrarily fixed the hours of labor of adult employees of bakeries and confectionery establishments, without providing for exceptions in emergency cases. In 1896 another bill was introduced adding certain sanitary amendments to the new law, such as providing for a minimum height of eight feet for all bakeshops and prohibiting domestic animals to be kept in bakeries. The Act which became known as Chapter 672 of the Laws of 1896 is substantially the present Article VIII. of the Labor Law. In 1897 the Legislature was engaged in consolidating into a series of general laws the Laws of the State and among others embodied all of the former independent acts bearing upon and having relation to the condition of labor and workmen into one act, entitled "The Labor Law," Chapter 32 of the General Laws. It was then that the question of the classification of the Bakery Inspection Law first presented itself to the Legislature and the latter although at the same time collating the laws relative to the public health under an act called the "Public Health Act," which was adopted the same year, placed the Bakery Act into the Labor Law. The legislature thus determined that this act was a labor measure and that its passage was so intended and in conformity thereto inserted it in

the Labor Law, as Article VIII. thereof and not in the Public Health law.

This act is the most arbitrary of its kind on the statute books of this country. It prohibits absolutely the employment of employees in baking and confectionery establishments over the prescribed limit of 60 hours a week without regard to loss of property or other emergencies that may arise, the desire of employes to contract for overtime, or the employer's willingness to pay for extra work in cases of emergency.

The Utah Miner' 8 Hour Law sustained by this Court in Holden vs. Hardy, 169 U. S. is clearly distinguishable in this respect from the act in question since it provides for an exception "in cases of emergency where life or property is in imminent danger," as well as in the fact that mining is not classed with the baking trade as innocuous.

The Acts of New York State of a similar nature are the act providing that ten hours within twelve consecutive hours should constitute a day's work on certain railroads. Overtime is here permitted in case of accident or unavoidable delay. Laws of 1897 Ch. 415, Section 5.

The New York Law relative to work in brick yards, forbidding employers to allow the men to work more than 10 hours per day, allows overtime agreements.

Outside of New York, most of these special Laws applying to adult labor concern railways or mines. Three other states followed New York in regulating the working time of men employed in bakeries, New Jersey, Pennsylvania and Missouri; as did also Ontario, Can.

The New Jersey Act was passed in April, 1896, and is almost an exact copy of the act here in is-

sue. The introducers of the act sought to enact the statute in the same form as the New York Act but the Legislature amended the ten hour work day provision, permitting employers in cases of emergency to employ the men two additional hours provided they receive extra remuneration for such extra time at the regular wage rate paid such employees.

An Act respecting Bakeshops, assented to April 7, 1896, is the title of a similar measure of the Province of Ontario. Section 7 thereof reads as follows: No employer shall require, permit or suffer any employee in any bakeshop to work more than sixty hours in any one week except by permission of the inspector given in writing to the employer.

It has already been remarked that the English Bakehouse Act has no restrictions as to the hours of labor of adults; nor do we find any such restrictions in the Bakery Inspection Laws of Connecticut, Massachusetts and Maryland passed in 1896 and 1897, and in the Act of Minnesota passed in 1895. The restrictions in the Acts of Pennsylvania and Missouri of 1897 apply to Sunday labor only.

Other laws regulative of the hours of labor may be distinguished from the act as respecting the freedom of contract in every State of the Union. While providing for a legal workday and for strict prohibitions against working over the legal limit they invariably either grant the parties to the labor contract the right to agree otherwise, to accept or pay extra compensation for over work, for extra work in cases of emergency, or of danger to life or property or for extra work to make up for lost time. We have failed to find an instance where an employer is so utterly helpless to protect his

property as in the case at bar, the only exception that we could find being where the restriction is intended to operate on State and Municipal employees or contractors.

5. Holden v. Hardy (169 U. S. 366) distinguished from the case at bar.

Working in underground mines has always been recognized as hazardous and unhealthful. The bakers trade has not. We have a specific reference to the bakers trade as an "innocuous" one in the opinion of Judge Earl in the Jacobs case, (98 N. Y. at page 114). And a similar declaration by the highest Court of California in re Westerfield (55 Cal. 550).

The Utah miners act was passed pursuant to a provision of the State constitution which provided as follows "the legislature shall pass laws to provide for the *health* and *safety* of employes in factories, smelters and mines" (Const. Art. 16, § 6). The Utah Legislature pursuant to this provision enacted a law which was certainly intended as a health regulation.

The New York Statute is contained in "The Labor Law" of the State and is purely a regulation of the hours of a trade which under present day conditions is not unhealthful. The additional provisions relating to the sanitary surroundings of the bake shop amply protect the baker against unsanitary conditons. Such protection is impossible to the miner.

The Utah law applies to "workingmen in all underground mines and workings." The New York

law affects only employes in a "biscuit, bread or cake bakery." The law should have applied to all persons engaged in the business of baking. Such is the language of the California statute on the same subject (55 Cal. 550).

The Utah statute excepts "cases of emergency where life or property is in imminent danger." The New York Statute is unreasonable in this respect and makes no exception. The baker's business is peculiarly liable to changes in the time of the maturing of the material and changes of temperature affect it to the extent of hours. Yet the employer is a criminal if he compels or permits his employes to work over the prescribed time, though they do it willingly and are paid for overtime, and though the bakers product is destroyed thereby.

6. The plaintiff in error, believing the New York statute under review to be unconstitutional prays that the judgment of the New York Court of Appeals be reversed.

Respectfully submitted,

FRANK HARVEY FIELD,
HENRY WEISMANN,
of Consul for plaintiff in error.

APPENDIX.

THE LABOR LAW.

CHAPTER 415, LAWS OF 1897.

Article VIII.—Bakeries and Confectionery Estabments.

Section 110. Hours of labor in bakeries and confectionery establishments.—No employee shall be required or permitted to work in a biscuit, bread or cake bakery or confectionery establishment more than sixty hours in any one week or more than ten hours in any one day, unless for the purpose of making a shorter work day on the last day of the week; nor more hours in any one week than will make an average of ten hours per day for the number of days during such week in which such employe shall work.

Source.—L. 1895, Ch. 518, Sec. 1, as amended by L. 1896, ch. 672.

Section 111. Drainage and plumbing of buildings and rooms occupied by bakeries.—All buildings or rooms occupied by bakeries.—All buildings or rooms occcupied as biscuit, bread, pie or cake bakeries shall be drained and plumbed in a manner conducive to the proper and healthful sanitary condition thereof, and shall be constructed with air shafts, windows or ventilating pipes, sufficient to insure ventilation. The factory inspector may direct the proper drainage, plumbing and ventilation of such rooms or buildings. No cellar or basement not now used for a bakery shall hereafter be so occupied or used unless the proprietor shall comply with the sanitary provisions of this article.

Source.—L. 1895, Ch. 518, Sec. 2, as amended by L. 1896, ch. 672.

Section 112. Requirements as to rooms, furniture, utensils and manufactured products.—Every room used for the manufacture of flour or meal food products shall be at least eight feet in height, and shall have, if deemed necessary by the factory inspector, an impermeable floor constructed of cement, or of tiles laid in cement, or an additional flooring of wood properly saturated with linseed oil. The side walls of such rooms shall be plastered or wainscoted. The factory inspector may require the side walls and ceiling to be whitewashed at least once in three months. He may also require the woodwork of such walls to be painted. The furniture and utensils shall be so arranged as to be readily cleansed and not prevent the proper cleaning of any part of a room. The manufactured flour or meal food products shall be kept in dry and airy rooms, so arranged that the floors, shelves and all other facilities for storing the same can be properly cleaned. No domestic animals, except cats, shall be allowed to remain in a room used as a biscuit, bread, pie or cake bakery, or any room in such bakery where flour or meal products are stored.

Source.—L. 1895, Ch. 518, Secs. 3, 4, as amended by L. 1896, ch. 672.

Section 113. Wash-room and closets; sleeping places.—Every such bakery shall be provided with a proper wash-room and water-closet or water-closet apart from the bake-room or rooms where the manufacture of such food product is conducted, and no water-closet, earth-closet, privy or ash-pit shall be within or connected directly with the bake-room of any bakery, hotel or public restaurant.

No person shall sleep in a room occupied as a

bake-room. Sleeping places for the persons employed in the bakery shall be separate from the rooms where flour or meal food products are manufactured or stored. If the sleeping places are on the same floor where such products are manufactured, stored or sold, the factory inspector may inspect and order them put in a proper sanitary condition.

Source.—L. 1895, Ch. 518, Secs. 5, 6, as amended by L. 1896, ch. 672.

Section 114.—Inspection of bakeries.—The factory inspector shall cause all bakeries to be inspected. If it be found upon such inspection that the bakeries so inspected are constructed and conducted in compliance with the provisions of this chapter, the factory inspector shall issue a certificate to the persons owning or conducting such bakeries.

Source.—L. 1895, ch. 518, Sec. 8, as amended by L. 1896, ch. 672. The portion of the former section fixing the number of inspectors is contained in Sec. 61, ante.

Section 115. Notice requiring alterations.—If, in the opinion of the factory inspector, alterations are required in or upon premises occupied and used as bakeries, in order to comply with the provisions of this article, a written notice shall be served by him upon the owner, agent or lessee of such premises, either personally or by mail, requiring such alterations to be made within sixty days after such service, and such alterations shall be made accordingly.

Source.—L. 1895, ch. 518, Sec. 9, as amended by L. 1896, ch. 672.

Penal Code, § 3841.

Any person who violates or does not comply with * * * the provisions of Article Eight of the Labor Law, relating to bakeries and confectionery establishments, the employment of labor and the manufacture of flour or meal food products therein * * * is guilty of a misdemeanor and upon conviction shall be punished for a first offense by a fine of not less than twenty nor more than one hundred dollars; for a second offense by a fine of not less than fifty nor more than two hundred dollars, or by imprisonment for not more than thirty days, or by both such fine and imprisonment; for a third offense by a fine of not less than two hundred and fifty dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment.

From Buck's Hygiene and Public Health, 1879, *Volume II., Pages* 10-11:

I.

OCCUPATIONS INVOLVING THE INTRODUCTION OF DELETERIOUS MATTERS INTO THE BODY.

1. *By Inhalation.*

A. Vapors and Gases:

a. Irritating—Metal-refiners, gold and silver smiths, jewelers, electrotypers, etchers, bleachers, straw-hat makers, manufacturers of chemicals.

b. Poisonous—Gasmen, gilders, mirror-makers, brass-founders, match-makers, rubber manufacturers, smelters, manufacturers of aniline, photographers, cloth-scourers.

c. Offensive—Brewers, butchers, fellmongers, leather-dressers, tanners, gut-cleaners, tripe and hand cleaners, fat-renderers, lard-refiners, bone-boilers, glue-makers, fertiliser manufacturers, pork packers, soap-makers, oil-pressers, cheese-makers, scavengers, sugar-refiners, fullers, hostlers, dog-fanciers, rag-pickers.

B. Dust:

a. Irritating—*Metallic*: Bronzers, file cutters, fitters, grinders, needle-makers, pin-pointers, cutlers. *Mineral*: Cement-makers, stone-cutters, potters, lime-burners, plaster-burners, glass-cutters, sandblast operatives, diamond-cutters, lithographers. *Vegetable*: Chimney-sweeps, molders, millers, cotton, flax and hemp operatives, tobacco operatives. *Animal*: Brush-makers, button-makers, feather, wool and silk operatives. *Mixed*: Carpet-cleaners, hair-pickers, street-sweepers.

b. Poisonous—Artificial-flower makers, wall-paper makers, hatters, enamelers, painters, type-founders, white-lead manufacturers, workers in copper.

2. *By Absorption.*

1. Irritating substances: Domestics, washerwomen, grocers.

2. Poisonous: Paederasts, prostitutes.

II.

OCCUPATIONS INVOLVING EXPOSURE TO CONDITIONS THAT INTERFERE WITH NUTRITION.

1. *Elevated or Variable Temperature.*

a. Vicissitudes of weather—Boatmen, fishermen, farmers, (florists, gardeners, nurserymen), drivers (cartmen, hackmen, omnibus drivers), laborers, bricklayers, masons.

b. Artificial heat—Brick-makers, bakers, cooks, charcoal-burners, blacksmiths, engineers, stokers, forgemen, iron-puddlers, glass-blowers, dyers, laundresses.

2. *Overuse of Certain Organs.*

a. Nervous system (mental worry)—Brokers, gamblers, merchants, physicians, tea-tasters.

b. Eyes—Engravers, lapidaries, watchmakers, seamstresses (embroiderers, lace makers).

c. Vocal Organs—Actors, clergymen, singers, public speakers.

d. Muscles—Athletes, copyists, musicians, (pianists, violinists, brass-instrument players).

3. *Constrained Attitude.*

Printers (compositors, pressmen), coopers, carpenters, cabinet-makers, shoe-makers, tailors, sales men and women.

4. *Sedentary Life.*

Artists, clerks, lawyers, literary men, students, teachers.

III.

OCCUPATIONS INVOLVING EXPOSURE TO MECHANICAL VIOLENCE.

1. From machinery: Factory operatives, machinists, railway employees.
2. From preventable accidents: Lumbermen, quarrymen, roofers.
3. From variations in atmospheric pressure: Aeronauts, caisson workers, drivers, boilermakers.

OCCUPATIONS WITH HIGHEST AND LOWEST MORTALITY FIGURES IN ENGLAND, 1890-2.

(Supplement to 55th Annual Report of the Registrar-General.)

Occupation.	Comparative mortality figure.
Dock laborer	1,829
File maker	1,810
Lead worker	1,783
Inn, hotel servant	1,725
Potter, earthenware manufacturer	1,706
Innkeeper, servant, etc	1,659
Costermonger, hawker	1,652
Innkeeper	1,642
Coal heaver	1,528
Cutler, scissors maker	1,516
General laborer (industrial districts)	1,509
Glass manufacture	1,487
Brewer	1,427
General laborer (London)	1,413
Tool, scissors, file, saw, etc., maker	1,412
Tin miner	1,409
Manufacturing chemist	1,392
Copper worker	1,381

Wool, silk, etc., dyer	1,370
Seaman, etc.	1,352
Slater, tiler	1,322
Chimney sweep	1,311
Lead miner	1,310
Nail, anchor, chain, etc., maker	1,301
Carman carrier	1,284
Copper miner	1,230
Gunsmith	1,228
Messenger, porter (not railway or government)	1,222
General laborer	1,221
Transport service	1,216
Musician, music master	1,214
Bargeman	1,199
Zinc worker	1,198
Stone, slate quarrier	1,176
Coach, cab service	1,153
Coal miner (Monmouthshire and South Wales)	1,145
Cotton, etc., manufacture	1,141

Occupation.	Comparative mortality figure.
Silk, satin, etc., manufacture	921
Baker, confectioner	*920*
Shoemaker, bootmaker	920
Commercial clerk	915
Blacksmith, whitesmith	914
Coal miner (West Riding)	912
Paper manufacture	904
Tallow, soap manufacture	897
Malster	884
Carpet, rug manufacture	873
Shopkeepers	859
Other occupied males	847
Fisherman	845
Miller	845

Publisher	833
Railway guard, etc.	825
Barrister, solicitor	821
Railway engine driver, guard, etc.	818
Railway engine driver	810
Ironmonger	807
Coal merchant	803
Engine driver (not railway, etc.)	786
Carpenter, joiner	783
Railway official, clerk	781
Artist, engraver, etc.	778
Wheelwright	778
Coal miner (Durham and Northumberland)	774
Ironstone miner	774
Sawyer	768
Domestic indoor servant	757
Tanner, fellmonger	756
Brick tile burner	741
Coal miner (Derbyshire and Nottinghamshire)	727
Shipwright	713
Lace manufacture	709
Hosiery manufacture	698
Laborer in agricultural group	666
Grocer	664
Agricultural laborer	632
Schoolmaster	604
Agriculturist	602
Farmer, grazier	563
Gardener, etc.	553
Clergyman	533

NOTE.—Occupations in the first column have a mortality above and those in the second column below the average for all occupied males (953). Among the 48 other occupational groups 39 are above and 9 below this figure. The standard of

comparison (1,000) is the mortality figure for all males.

Indented lines indicate sub-classes or occupations.

The number of deaths of male persons between 25 and 65 years of age in the years 1890, 1891 and 1892 is compared with the number of living persons exercising the various occupations as returned by the census of 1891. The mortality of all males within the age period 25-65 years is then taken as a standard (1,000) with which the death rate in the various occupations is compared. The unoccupied males had a death rate more than twice as large as that of all males, the exact ratio being as 2,215 to 1,000, while the occupied males of course had a lower mortality, thus:

All males (standard)	1,000
Unoccupied males	2,215
Occupied males—England	953
Occupied males—London	1,147
Occupied males—Industrial districts	1,248
Occupied males—Agricultural districts	687

Where Bread is Made.—By F. J. Waldo, M. A., M. D.; from article in Journal of the Sanitary Institute, April, 1894 (England), dealing with bakers and bake-houses and closing with thirteen recommendations of sanitary changes in the shops of London. He concludes the article by saying "if baking be carried on in well ventilated places, with a perfect sanitary environment, there is no reason why it should be a particularly dangerous or unhealthy trade."

BAKESHOP SANITATION AND THE REDUCTION OF THE WORKTIME OF BAKERS.

The claim that the reduction of the hours of labor of bakers is an element in bake-shop sanitation and in the promotion of the health of bakers and the wholesomeness of their products, is not sustained by medical and sanitary authority, and we fail to find an instance in which those who have given thought and labor to this question, have in any wise adverted to it.

The following references and opinions are notable in this connection.

The Lancet, Vol. 2, 1895, page 298, contains a joint paper of Dr. F. J. Waldo and Dr. David Walsh, two English sanitary experts of note, dealing with underground industries, especially with reference to the baking trade in London. They state that the underground rooms are unfit for workmen. The only way in which they can be made fit to work in is to have them at least eight feet high and a minimum of 500 cubic feet of air space for each workman, and a special allowance for each gas jet. Walls must be kept smooth and dry. Window space must equal one-eighth of the floor and ventilation, light, drainage and lavatory accommodations must be such as to satisfy advanced modern requirements, floors should have nine-inch concrete and drains should be a foot deep laid in concrete. There should be a front area outside and a back or side area to promote the circulation of air.

The recommendations of these men do in no wise refer to the reduction of the hours of labor of the employees. Report of Lancet, Special Sanitary Commission on Bakeries and Bread Making, 1889, Vol. 2, page 1140, treating of the unsanitary conditions of bakeries and poor ventilation. It states

that the system should be denounced, EVEN THOUGH SHORT HOURS AND INCREASED WAGES WERE GIVEN, the other conditions were so vile that it was dangerous to the consumer and the baker. Page 1142.

Report of Lancet Special Sanitary Commission on Bakeries and Bread Making, 1890, Vol. 1, Page 42, No. 2, advocating a better knowledge and wider application of sanitary laws.

No. 3, Page 208, same book, treating of ventilation and proper sanitation as followed in Belgium and France.

No. 4, Page 719, same volume, condemns poor sanitary and ventilating conditions in Scotland, states there are very few model bakeries in Scotland, most of the bakeries being under the ground.

Comparativ Mortality of men 25 to 65 years of age in different occupations.—Referencee handbook of Medical Sciences, Vol. 6, page 317, mortality of clergymen being lowest, 100 out of a list of 21 occupations, the highest being cotton workers at 196. Bakers are number 11 on the list at 172, above the bakers are scheduled cabinet makers 173, masons and brick layers 174, blacksmiths 175, clerks 170, railway laborers 185, gunsmiths 186, wool workers 180, tailors 199, hatters 191, and cotton workers as above stated. Millers have a higher death list than bakers, see page 325.

On page 317 is shown that the mortality from phthisis is far more frequent in many other trades than among bakers.

The "Practitioner," Vol. 53, 1894, pages 387, 389, 390, and up to page 400, treats of unsanitary conditions and poor ventilation of bakers and advocates reforms in that direction, but does not allude to the hours of labor.

Dr. Arlidge in his work entitled "The Diseases

of Occupations" enumerates the unhealthy influences to which the baker is exposed, as follows:

Exposure to heat from ovens, dust, storm, variations of temperature, fatiguing movements in kneading bread. Prolonged hours of work, more or less night work and loss of rest. And he comments on the discrepancies noticeable in the vital statistics of bakers compiled by different authors showing that many other occupations show a higher death rate.

Dr. Ogles' figures with respect to comparative mortality in various occupations are given in the supplement to the 45th Annual Report of the Register General.

The calculations were made from deaths registered during 1880-1881, 82, that is to say, prior to the passing of the English Bake-house Regulation Act of 1883, 100 headings on death within all, and in 37 of these the comparative mortality figure exceeds that of the bakers while in 62 it falls short. The comparative mortality figures of the bakers and confectioners stands at 938, and it may be noted that while he compares unfavorably with the grocer and with the shop keepers as a whole, he compares favorably with the cheesemongers, milk or butter man, the green-grocer and fruiterer, the fish monger and the poulterer and the butcher.

He states on page 396 that statistics show that the mortality from phthisis and from diseases of the respiratory organs hardly departs from the average of all males. Dr. Arlidge states that he does not believe FLOUR DUST CAUSES PULMONARY DISEASES TO ANY CONSIDERABLE EXTENT.

Our attention has been called to the fact that the bakers are in their majority night workers, that but a minority of them marry and lead a domestic life;

that large numbers of them live in cheap lodging houses, with a bar annex, amid squalor and filth; and that they are largely addicted to the excessive use of alcohol. Taking these facts for granted we do not hesitate to say that conditions such as these contribute largely to the debilitation and unhealthful condition of the men, where such condition may exist.

It is clear to us that habits such as these and life in these surroundings will render an extensive leisure of the employes more dangerous to their health in both a physical and moral sense, than correspondingly long hours of work in bake-shops properly conducted under the sanitary rules provided for by the provisions of the bakery inspection laws.

Professor Oliver, M. A., M. D., F. R. C. P., who is the medical expert of the White Lead, Dangerous Trades, Pottery and Lucifer Match Committees of the British Home Office, strongly supports this opinion. In statistics showing "the comparative mortality from specified causes in certain dusty occupations," he shows that the mortality among bakers stands eighteenth in a mortality list covering twenty-two such occupations, being exceeded by the mortality in such trades as Locksmith, Tinsmith, Bricklayer, Stonecutter, Cooper and Wood Turner, and various trades involving the handling of iron, steel, brass, copper and zinc, as well as the textile trades. Moreover, Prof. Oliver shows that the mortality among bakers from phthisis and diseases of the respiratory system *is the lowest of all the twenty-two occupations he cites, which occupations cover nearly all the groups in which artisans are employed.*

It is therefore plain that the occupation of a baker is not in itself as harmful as many trades for which no special legislation has been enacted.

The occupation not being inherently harmful, it

follows that the question is not whether bakers should work 9 or 10 or 11 hours or any specified time, but whether the sanitary condition of the individual bake-shop in which they are employed is what it should be in respect to ventilation, lighting, toilet accommodations and the like. If it is not, they should not be allowed to work there until unsanitary conditions have been remedied; if it is, they will take no more harm by working eleven or twelve hours than by working only ten.

A far more important factor than that of the hours of labor is the fact that not sufficient attention has been given by the public authorities to regulating the sanitary condition of some bake-shops, with resultant injustice not only to the operatives, but to the consumers of bakery products.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

FEBRUARY TERM, 1905.

No. 292.

JOSEPH LOCHNER, PLAINTIFF IN ERROR,

against

THE PEOPLE OF THE STATE OF NEW YORK,
DEFENDANTS IN ERROR.

Brief for Defendants in Error.

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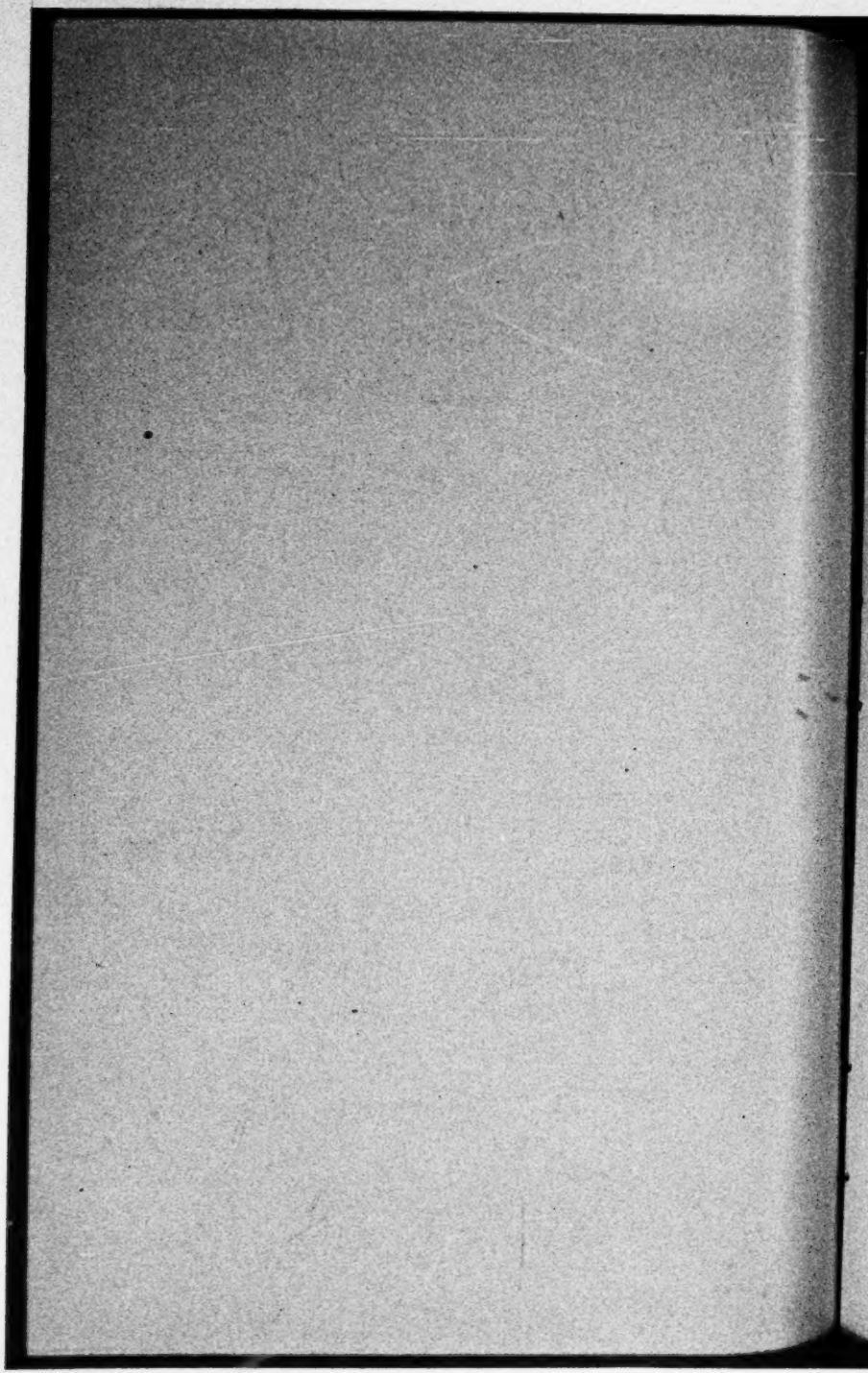

IN THE

SUPREME COURT

OF THE

UNITED STATES.

UNITED STATES SUPREME COURT.

JOSEPH LOCHNER,
PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF NEW YORK, DEF'TS IN ERROR.

No. 292.

BRIEF OF THE ATTORNEY GENARAL OF THE STATE OF NEW YORK ON BEHALF OF THE DEFENDANTS IN ERROR, THE PEOPLE OF THE STATE OF NEW YORK.

In error to the County Court of Oneida County, State of New York.

This is a writ of error allowed on the 18th day of May, 1904, directed to the County Court of Oneida county, State of New York, to review the determination of that court and of the Court of Appeals of the State of New York, affirming the determination of the County Court of Oneida county, in the State of New York, con-

victing the plaintiff in error of a misdemeanor, second offense, and sentencing him to pay a fine of fifty dollars and to stand convicted until said fine was paid, not to exceed fifty days, in the Oneida county jail.

Plaintiff in error was convicted for a violation of Article VIII, Section 110, of Chapter 415 of the Laws of the State of New York, known as the Labor Law of the State of New York, which section is as follows:

"HOURS OF LABOR IN BAKERIES AND CONFECTIONERY "ESTABLISHMENTS.

"Section 110. No employee shall be required or permitted to work in a biscuit, bread or cake bakery or confectionery establishment more than sixty hours in any one week, or more than ten hours in any one day, unless for the purpose of making a shorter work day on the last day of the week; nor more hours in any one week than will make an average of ten hours per day for the number of days during such week in which such employee shall work."

The plaintiff in error was indicted upon the ground that he permitted and required one Aman Schmitter, an employee in his employ, to work more than sixty hours in one week during the week commencing April 19 and ending April 26, 1901, at his biscuit, bread and cake bakery and confectionery establishment situated at No. 82-84 South street, in the city of Utica, Oneida county, New York. (Record, pages 2 and 3.)

The plaintiff in error demurred to the indictment upon the grounds—

First. That more than one crime is charged in the indictment, within the meaning of section 278 of the Code of Criminal Procedure of the State of New York.

Second. That more than one crime is charged in the

indictment, within the meaning of section 279 of the same Code; and

Third. That the facts stated do not constitute a crime. (Pages 3 and 4.)

The demurrer was overruled. The plaintiff in error refused to plead, and was thereupon convicted as above stated.

An appeal was taken to the Appellate Division of the Supreme Court of the State of New York, and the judgment of conviction was affirmed.

An appeal was taken from this determination to the Court of Appeals of the State of New York, which is the hightest court of law or equity of the State of New York, and on the 4th day of April, 1904, the judgment of conviction was affirmed and judgment to that effect entered.

POINTS.

I.

This Court is without jurisdiction to re-examine the judgment below.

The conflict, if any existed, between the laws of the State of New York and the Constitution of the United States, was not set forth in the demurrer to the indictment, and no other or different pleading was interposed by the plaintiff in error. There was no evidence taken, or trial had, other than his refusal to plead and his conviction. He did not ask for any instructions, nor did he except to any rulings of the court, and the question of the conflict of the laws of the State of New York and

the Federal Constitution was not necessarily involved in the decision of the County Court of Oneida county.

Home for Incurables v. City of New York, 187 U. S. 155.

From the pleadings in the case the County Court of Oneida county had no reason to suppose that the plaintiff in error especially claimed that the statute in question deprived him of any right secured by the Constitution of the United States.

"The jurisdiction of this court to re-examine the final "judgment of a State court cannot arise from inference, "but only from averments so distinct and positive as to "place it beyond question that the party bringing a case "here from such court intended to assert a Federal "right."

Oxley Stove Co. v. Butler County, 166 U. S. 648.
Levy v. Superior Court of San Francisco, 167 U. S. 175.

It is true that the judges of the Court of Appeals in their opinions discussed the question as to whether the law under consideration offended against the first section of the Fourteenth Amendment to the United States Constitution, or against sections one and six of article one of the United States Constitution; but there was nothing in the demurrer interposed by the plaintiff in error in the County Court of Oneida county which indicated that the plaintiff in error (there the defendant) intended to raise this Federal constitutional question.

II.

The New York statute under consideration involves an exercise of the police power of the State. The burden of demonstrating that this statute is repugnant to the provisions of the Federal Constitution is upon the plaintiff in error, and he must show that there was no basis upon which the State court could rest its conclusion that the legislation in question was a proper exercise of police power.

It is fundamental that the police power is necessarily elastic, so as to meet new and changing conditions of our civilization.

It is quite probable that fifty years ago or less the courts might have regarded as an improper exercise of the police power legislative enactments which are now considered obviously appropriate in this respect.

So it is that in different States we find different conditions of which the State itself is the best judge, and to meet which its Legislature frames and passes laws.

A State which contains within its borders many and large mining enterprises naturally gives to the subject of public health in connection with the working of mines a study which is not needed in a State where mines do not exist or are not worked.

Holden v. Hardy, 169 U. S. 368.

A great commercial and manufacturing State, like the State of New York, perforce, gives to the question of police regulation of conditions obtaining in factories

and workshops attention and study which might not be needed in a State the main employment of which are mining or farming.

The conditions and problems which present themselves to State legislatures and to State courts are, therefore, frequently peculiar to the locality. Investigations are made, public sentiment is aroused, conditions become the subject of common knowledge, and to meet all this the Legislature passes an act which must be presumed to be the clear expression of the will of that community. If there be differences of opinion as to the wisdom of such legislation, those differences must be determined by legislative enactment and by the construction which such enactment receives from the courts of the State in which the enactment is attacked.

Therefore when a law involving the exercise of the police power has been construed by the highest court of a State as constitutional, we submit that the person complaining of that construction upon an appeal to the Supreme Court of the United States must show in effect, that there is no fair or reasonable doubt that the enactment is unconstitutional, before this court will so hold.

III.

The conditions existing in the State of New York which may be considered as the occasion for the enactment of the statute under consideration.

The State of New York has the largest population of any State in the Union. In that State are situated great business and manufacturing centers, such as the city of

New York (now comprising the old city of New York, Brooklyn, Long Island City, and outlying districts), the cities of Buffalo, Rochester, Syracuse, Utica, and many other communities not so large in population, but in which are congregated considerable numbers of working people engaged in local industries.

In some of these cities the population is greatly congested, and in some sections of these cities people are crowded together much more closely in dwelling and business places than in others.

Labor has grown to be specialized, and great numbers of men and women, married and single, work during the day and, in some occupations, at night. The facilities for domestic cooking are infinitely more limited than they were years ago or than they are to-day in the smaller communities within the State itself, and in other parts of the country. And the opportunity to make bread at home is also more limited, because of the employment of the women of the family in great numbers as wage earners, and because, also, of the fact that great numbers of persons are unable to employ domestic servants.

The result is that the making of biscuit, bread, cake and confectionery has grown to be a great business. In all but the rural portions of the State there are to be found establishments which make and sell biscuits, bread, cake and confectionery.

These products are very generally sold to and consumed by the people at large.

It is needless to dilate upon the proposition that these flour and meal food products are important to the public health, and that they should be manufactured by cleanly persons and under surroundings and conditions which shall not menace but conserve the public health.

While it is true that confectionery is not needful in the daily life of our people, it is equally true that a great amount of it is consumed, particularly by women and children.

The main purpose of the enactment of the law under discussion was to safeguard the public health; but another purpose also, as we shall presently show, was to safeguard the health of those engaged in the occupation of making biscuit, bread, cake and confectionery.

The statute which sought to accomplish these results is a part of a codification known as "The Labor Law," being Article VIII thereof, and in words and figures as follows:

THE STATUTE.

"Section 110. *Hours of labor in bakeries and confectionery establishments.*—No employee shall be required or permitted to work in a biscuit, bread or cake bakery or confectionery establishment more than sixty hours in any one week, or more than ten hours in any one day, unless for the purpose of making a shorter work day on the last day of the week; nor more hours in any one week than will make an average of ten hours per day for the number of days during such week in which such employee shall work.

"Sec. 111. *Drainage and plumbing of buildings and rooms occupied by bakeries.*—All buildings or rooms occupied as biscuit, bread, pie or cake bakeries shall be drained and plumbed in a manner conducive to the proper and healthful and sanitary condition thereof, and shall be constructed with air shafts, windows or ventilating pipes, sufficient to insure ventilation. The factory inspector may direct the proper drainage, plumbing and ventilation of such rooms or buildings. No cellar or basement, not now used for a bakery, shall

"hereafter be so occupied or used, unless the proprietor "shall comply with the sanitary provisions of this ar- "ticle.

"Sec. 112. *Requirements as to rooms, furniture, "utensils and manufactured products.*—Every room "used for the manufacture of flour or meal food prod- "ucts shall be at least eight feet in height and shall have, "if deemed necessary by the factory inspector, an im- "permeable floor constructed of cement, or of tiles laid "in cement, or an additional flooring of wood properly "saturated with linseed oil. The side walls of such "rooms shall be plastered or wainscoted. The factory "inspector may require the side walls and ceiling to be "whitewashed, at least once in three months. He may "also require the wood work of such walls to be painted. "The furniture and utensils shall be so arranged as to "be readily cleansed and not prevent the proper clean- "ing of any part of a room. The manufactured flour "or meal food products shall be kept in dry and airy "rooms so arranged that the floors, shelves and all other "facilities for storing the same can be properly cleaned. "No domestic animals, except cats, shall be allowed to "remain in a room used as a biscuit, bread, pie or cake "bakery, or any room in such bakery where flour or "meal products are stored.

"Sec. 113. *Wash-room and closets; sleeping places.*— "Every such bakery shall be provided with a proper "wash-room and water-closet or water-closets apart from "the bake-room, or rooms where the manufacture of "such food product is conducted, and no water-closet, "earth-closet, privy or ashpit shall be within or con- "nected directly with the bake-room of any bakery, ho- "tel or public restaurant. No person shall sleep in a "room occupied as a bake-room. Sleeping places for "the persons employed in the bakery shall be separate

"from the rooms where flour or meal food products are "manufactured or stored. If the sleeping places are on "the same floor where such products are manufactured, "stored or sold, the factory inspector may inspect and "order them put in a proper sanitary condition.

"Sec. 114. *Inspection of bakeries.*—The factory in- "spector shall cause all bakeries to be inspected. If it "be found upon such inspection that the bakeries so in- "spected are constructed and conducted in compliance "with the provisions of this chapter, the factory inspec- "tor shall issue a certificate to the persons owning or "conducting such bakeries.

"Sec. 115. *Notice requiring alterations.*—If, in the "opinion of the factory inspector, alterations are re- "quired in or upon premises occupied and used as bak- "eries, in order to comply with the provisions of this "article, a written notice shall be served by him upon "the owner, agent or lessee of such premises, either per- "sonally or by mail, requiring such alterations to be "made within sixty days after such service, and such "alterations shall be made accordingly."

IV.

The statute under consideration was a proper exercise of the police power of the State.

It was claimed below, and considered by some of the dissenting judges, that this statute is a "labor" law, and has not to do with public health.

The view thus expressed was based to some extent upon the fact that the statute is found incorporated in "The Labor Law."

It is fundamental, of course, that a law is always what it is, and not what it is called, but in order that a clear understanding may be had of the so-called "Labor Law" of the State of New York, it may be desirable briefly to refer to that law.

In the State of New York there is a constant and proper effort to consolidate or codify enactments passed at different times into a general law, so that reference to the subject matter may be easy; and, therefore, scattered enactments are frequently gathered together under some one comprehensive title.

Various statutes have been passed regulating manufacture in tenement houses, the employment of women and children in factories and mercantile establishments, the employment of children in street trades, the hours of labor of persons employed by public service companies, the employment of persons in brickyards, metal polishing establishments and the like.

These laws were gathered together by the Legislature of 1897, and, by virtue of chapter 415 of the Laws of 1897, they became incorporated in the General Laws as Chapter XXXII, the short title of which is "The Labor Law."

An examination of this statute will show that this was a convenient codification of laws regulating the conditions under which certain goods and products should be manufactured or sold, and also regulating, for the purposes of public health, the hours of employes and the surroundings in which they should be employed.

(Annexed hereto for ready reference is Appendix II, containing the title of the act and certain specific provisions mentioned in this brief.)

As other laws of a similar general purpose are passed, they become sections of "The Labor Law," just as cognate laws become sections of "The Domestic Relations

Law," "Negotiable Instruments Law," and other codifications for purposes of convenience.

The statute under consideration was first passed in substantially its present form in 1895, constituting chapter 518 of that year.

Its title was, "AN ACT TO REGULATE THE MANUFACTURE OF FLOUR AND MEAL FOOD PRODUCTS."

(A copy of this Act will be found in Appendix I.)

This, then, was the true title of the Act, and evidences its purpose so far as the title is of any importance in ascertaining the intent of the Legislature.

It was an Act *to regulate the manufacture of flour and meal food products*, and not a "labor" law in the sense of regulating contractual relations between master and servant.

In point of fact, the Act, "The Labor Law," contains many provisions which have to do with the public health.

Upon examination it will appear that the police power is exercised by the Legislature in that Act, as follows:

Section 5: Provides that an consecutive hours' labor shall constitute a day's labor in the operation of street, surface and elevated railroads operated within cities of more than one hundred thousand inhabitants.

This is obviously to protect the public health and welfare, so that the safety of the public may not be endangered by the overworking of men charged with the duty of operating railroads carrying large numbers of persons.

Section 6: Provides that ten hours shall constitute a legal day's work in the making of brick in brickyards owned by corporations.

This is obviously a health regulation, necessitated by the danger of the particles getting into the throat and lungs of the employees, and thereby bringing on tuberculosis and other diseases. The nature and this charac-

ter of this occupation is shown by the many medical authorities collated by Judge Vann, at pages 32 and 33 of the record.

Section 7: Provides for the regulation of hours of labor on steam, surface and elevated railroads within the State.

Having the same purpose as section 5, *supra*.

Section 17: Provides a health regulation for female employees in factories, for waitresses in hotels and restaurants, by requiring seats and permitting the use thereof to such an extent as may be "reasonable for the preservation of their health."

Clearly a health regulation, having in mind the necessity of developing healthy women who shall bear healthy children.

Sections 77 and 78: Regulate the hours of employment of minors and women in factories.

Obviously a health regulation, for the reasons above stated as to women, and in order that minors shall not be stunted or sapped of their physical and mental strength.

Section 85: Requires at least two hundred and fifty cubic feet of air space in each room of a factory for each employee therein between six a. m. and six p. m., and at least four hundred cubic feet of air space in each room for each employee between six p. m. and six in the morning.

Obviously also a health regulation, so that work may be done under proper sanitary conditions.

Section 92: Provides that a shop, room or building where one or more persons are employed in doing public laundry work by way of trade, is a factory. So as to make the public laundry subject to the regulations relating to factories. This section also provides that no public laundry work shall be done in a room used for a sleeping or living room, and also that the laundry shall be kept clean.

Obviously a health regulation.

Section 93: Prohibits the employment of a male child under eighteen years of age, or of any female, in any factory operating or using any emery polishing or buffing wheel, where articles of the baser metals or articles of irradium are manufactured.

Obviously a health regulation, such as the brickyard regulation, *supra*, to protect against a dangerous and disease-creating occupation.

Section 100: Forbids the manufacturing of a large number of articles in tenement houses without obtaining a license therefor, as provided by the Tenement House Law.

Obviously to protect the public health in the use of garments manufactured in congested districts and unhealthful surroundings under conditions which, prior to the adoption of this law, were horrible to contemplate and were gravely dangerous to public health.

All these laws referred to in the foregoing sections indicate that, as our civilization advances and our population becomes more congested and our daily relations grow more complex, the police power of the State expands to meet these new conditions.

Yet the necessity for these enactments has arisen only in comparatively recent times; and not so many years ago such legislation might have evoked contempt instead of the respect and dignity which it now commands.

Another consideration for this class of legislation in the State of New York is the fact that there have come to that State great numbers of foreigners with habits which must be changed so that in due course of time there may be that assimilation which has made so successful our previous immigrations.

These laws are all designed to meet this and many other new problems which are confronting us as the years go by.

In the light, then, of this general type of legislation prevailing in the State of New York, we may consider the statute now before this Court.

Each section of the statute is not to be read alone, but, in conformity with well-settled principles, each section must be read with every other section, to the end that they may be a complete and harmonious scheme of legislation.

It will not be contended for a moment that section 111, having to do with the drainage and plumbing of buildings and rooms occupied by bakers; section 112, relating to the requirements as to rooms, furniture, utensils and manufactured products; section 113, relating to wash-rooms, closets and sleeping places; section 114, relating to inspection of bakeries, contain within them anything other than public health regulations.

We come, then, to the consideration of section 110, always remembering that it is not the purpose of that section to regulate the contractual relation between master and servant.

Under its exercise of the police power the State has gone back of the store where biscuit, bread, cake and confectionery is exposed for sale, and down into the cellars, regulating the plumbing, the ventilation, the draining, the exclusion of sleeping rooms, privy vaults, domestic animals.

Is the condition, as to health and cleanliness, of the man who makes the bread a matter of no concern with the new knowledge which has come to us from the scientific student, and with our present enlightenment as to the need for sanitary precautions? Is it not true that the man who suffers with skin diseases, with tuberculosis and other affections, may communicate some of the germs of his disorder to this product which is to be eaten by the mass of our people?

Is it not equally true that, working as the baker does, at night, he is more likely to contract disease by reason of the impoverishment and deterioration of his physical system and his exclusion from the sunlight in which it is the privilege of most of us to do our daily work?

All these are considerations which lead us to the question: Who shall say where the line shall be drawn in the exercise of the police power in a subject of this character? Shall it be the courts, or shall it be the Legislature, which must be presumed to have had before it all the facts upon which it could make a deliberate and intelligent judgment?

The necessity for these safeguards may not exist in the private house or in the hotel or restaurant. Whether such necessity exists in hotels or restaurants is eminently a matter for the Legislature to determine.

It is not important here, because this statute does not seek to regulate the making of bread in private homes or in hotels or restaurants. It regulates the making of biscuit, bread, cake or confectionery in establishments which are carried on for that purpose and engaged in that business, and as it applies to all such establishments alike, there is no discrimination in the statute, for it comprehends all persons of the same class.

The power of the Legislature to decide what laws are necessary to secure the public health, safety or welfare is subject to the power of the court to decide whether an act purporting to promote the public health or safety has such a reasonable connection therewith as to appear upon inspection to be adapted to that end. And the court may order judicial notice of the fact of the common belief of the people upon that subject.

Matter of Viemeister, 179 N. Y. 235.

Perhaps the necessity for caution and protection in dealing with breadstuffs cannot be better illustrated than

by a provision of the Sanitary Code of the city of New York.

The Sanitary Code is a code of ordinances relating to the public health, adopted by the Board of Health, of the Department of Health of the city of New York, pursuant to power conferred upon it by the Legislature. In order to prevent particles and microbes from gaining access to certain food products, section 46 of the Sanitary Code above referred to provides as follows:

"Section 46. No breadstuffs, cake, pastry, dry or "preserved fuits, candies or confectionery, shall be kept, "sold or offered for sale outside of a building in the "city of New York, or in any street or public place, "unless they be kept properly covered, so that they shall "be protected from dust and dirt."

Another and final reason in support of this statute is the proper desire of the people to so safeguard their citizens that they shall be strong and healthy, for the State has a profound interest in the normal vitality of its citizens, who may be called upon to suppress riot or disorder within its borders, or to enlist in the service of their country for foreign war whenever they may be called upon.

In occupations of this character, carried on in the main at night, and in cellars and other underground places, having no change or variation which lightens the monotony, nothing makes for the health of the man more than a fair, apportionment of his hours of labor. What that apportionment or limit shall be is again peculiarly a subject to be finally disposed of by the Legislature, and unless the restriction is patently unreasonable, the Legislature must necessarily be the final judge of the reasonableness of the legislation regulating hours of labor.

Some reference was made by Judge O'Brien (Record, fols. 56 and 57) to the word "permit," which is used in

the statute—"no employee shall be required or *permitted to work.*"

There are two views of the use of this word:

First: The use of this word was careful drafting, so as to prevent evasion of the statute. It was intended to be a barrier to the employer who might testify that he had not orally or in writing *required* his employe to work, and yet he might by inference and acquiescence accomplish the same result by "permitting" him to so work.

Secondly: The State, in undertaking this regulation, has a right to safeguard the citizen against his own lack of knowledge. In dealing with certain classes of men the State may properly say that, for the purpose of having able-bodied men at its command when it desires, it shall not permit these men, when engaged in dangerous or unhealthful occupations, to work for a longer period of time each day than is found to be in the interest of the health of the person upon whom the legislation acts.

The unhealthful character of the baker's occupation was fully commented upon by Judge Vann in his opinion, which will be found at fols. 47-54 of the record.

The opinions of the judges of the Court of Appeals are so exhaustive and refer so fully to the cases on this subject, that we shall content ourselves, in conclusion, with but two observations, in the language of this court and of the Court of Appeals of the State of New York:

"The propriety of its exercise within constitutional "limits is purely a matter of legislative discretion with "which courts cannot interfere."

People v. King, 110 U. S. 418-423.

If the Act "admits of two constructions as to its be-"ing a health measure or otherwise, the courts should

"give the construction which sustains the Act and makes "it applicable in furtherance of the public interests."
Bohmer v. Haffen, 161 N. Y. 390-399.

V.

It is respectfully submitted that the judgment of the courts of New York should be affirmed and the writ of error dismissed.

Respectfully submitted,
JULIUS M. MAYER,
Attorney-General of the State of New York,
Attorney for the Defendants in Error.
The Capitol,
Albany, N. Y.

APPENDIX I.

CHAPTER 518, LAWS OF 1895.

AN ACT to Regulate the Manufacture of Flour and Meal Food Products.

(Became a law May 2, 1895, with the approval of the Governor. Passed, three-fifths being present.)

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. No employe shall be required, permitted or suffered to work in a biscuit, bread or cake bakery or confectionery establishment more than sixty hours in any one week, or more than ten hours in any one day, unless for the purpose of making a shorter work day on the last day of the week, nor more hours in any one week than will make an average of ten hours per day

for the whole number of days in which such person shall so work during such week.

Sec. 2. All buildings occupied as biscuit, bread or cake bakeries shall be drained and plumbed in a manner to conduce to the proper and healthful sanitary condition thereof, as the factory inspector or any of his deputies shall direct.

Sec. 3. Every room used for the manufacture of flour or meal food products shall have, if deemed necessary by the factory inspector, an impermeable floor constructed of cement or of tiles, laid in cement, with an additional flooring of wood properly saturated with linseed oil. The side walls and ceilings of such rooms shall be plastered or wainscoted, and, if required by the factory inspector or a deputy factory inspector, shall be whitewashed at least once in three months. The furniture and utensils in such rooms shall be so arranged that the furniture and floor may at all times be kept in a proper and healthful sanitary and clean condition.

Sec. 4. The manufactured flour or meal food products shall be kept in perfectly dry and airy rooms, so arranged that the floors, shelves and all other facilities for storing the same can be easily and perfectly cleaned.

Sec. 5. Every such bakery shall be provided with a proper wash-room and water-closet or closets, apart from the bake-room or rooms where the manufacturing of such food products is conducted; and no water-closet, earth-closet, privy or ash-pit shall be within or communicate directly with the bake-room of any bakery, hotel or public restaurant.

Sec. 6. The sleeping places for the persons employed in a bakery shall be separate from the room or rooms where flour or meal food products are manufactured or stored.

Sec. 7. Any person who violates any of the provisions of this act, or refuses to comply with any requirement of the factory inspector or a deputy factory inspector, as provided herein, shall be guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than twenty nor more than fifty dollars for a first offense, and not less than fifty nor more than one hundred dollars for a second offense, or imprisonment for not more than ten days, and for a third offense by a fine of not less than two hundred and fifty dollars and not more than thirty days' imprisonment.

Sec. 8. For the purpose of enforcing this act and of chapter four hundred and nine of the laws of eighteen hundred and eighty-six, and acts amendatory thereof, the factory inspector may appoint four additional deputies, each of whom shall receive an annual salary of one thousand two hundred dollars, together with his necessary traveling and other expenses incurred in discharging the duties of his office, payable monthly by the treasurer on the warrant of the Comptroller, upon proper vouchers approved by the factory inspector. Under the direction of the factory inspector, such deputies shall inspect all bakeries and see that the provisions of this act and of chapter four hundred and nine of the laws of eighteen hundred and eighty-six, and the acts amendatory thereof, are observed therein. Such deputies shall have all the powers and duties of the deputy inspectors and shall be amenable to the supervision and control of the factory inspector the same as the deputy factory inspectors appointed under chapter four hundred and nine of the laws of eighteen hundred and eighty-six, and the acts amendatory thereof.

Sec. 9. The owner, agent or lessee of any property affected by the provisions of sections two, three or five of this act shall, within sixty days after the service of

a notice requiring any alterations to be made in or upon such premises, comply therewith, and such notice shall be in writing and may be served upon such owner, agent or lessee, either personally or by mail, and a notice mailed to the last known address of such owner, agent or lessee shall be deemed sufficient for the purposes of this act.

Sec. 10. This act shall take effect immediately.

APPENDIX II.

Title of and extracts from the "Labor Law" of the State of New York, being chapter 415 of the Laws of 1897 (as amended) and chapter XXXII of the "General Laws" of the State of New York:

THE LABOR LAW.

(Chapter 415 of the Laws of 1897, constituting Chapter XXXII of the General Laws.)

Article I. General provisions. (§§ 1-21.)
II. Commissioner of labor statistics. (§§ 30-32.)
III. Public employment bureaus. (§§ 40-43.)
IV. Convict-made goods and duties of commissioner of labor statistics relative thereto. (§§ 50-55.)
V. Factory inspector, assistant and deputies. (§§ 60-67.)
VI. Factories. (§§70-93.)
VII. Tenement-made articles. (§§ 100-106.)
VIII. Bakery and confectionery establishments. (§§ 110-115.)
IX. Mines and their inspection. (§§ 120-129.)
X. State board of mediation and arbitration. (§§ 140-149.)
XI. Employment of women and children in mercantile establishments. (§§ 160-173.)
XII. Employment of children in street trades. (§§ 174-179a.)
XIII. Examination and registration of horseshoers. (§§ 180-184.)
XIV. Laws repealed; when to take effect. (§§ 190-191.)

ARTICLE I.

General Provisions.

Section 1. Short title.
2. Definitions.
3. Hours to constitute a day's work.
4. Violations of the labor law.
5. Hours of labor on street surface and elevated railroads.
6. Hours of labor in brickyards.
7. Regulation of hours of labor on steam surface and elevated railroads.
8. Payment of wages by receivers.
9. Cash payment of wages.
10. When wages are to be paid.
11. Penalty for violation of preceding sections.
12. Assignment of future wages.
13. Preference in employment of persons upon public works.
14. Stone used in State or municipal works.
15. Labels, brands, etc., used by labor organizations.
16. Penalty for illegal use of labels, etc.; injunction proceedings.
17. Seats for female employes.
18. Scaffolding for use of employes.
19. Inspection of scaffolding, ropes, blocks, pulleys and tackles in cities.
20. Protection of persons employed on buildings in cities.
21. Factory inspector to enforce provisions of article.

Section 1. *Short title.*—This chapter shall be known as the Labor Law.

Sec. 2. *Definitions.*—The term employe, when used in this chapter, means a mechanic, workingman or laborer who works for another for hire.

The person, employing any such mechanic, workingman or laborer, whether the owner, proprietor, agent, superintendent, foreman or other subordinate, is designated in this chapter as an employer.

The term factory, when used in this chapter, shall be construed to include also any mill, workshop, or other manufacturing or business establishment where one or more persons are employed at labor.

The term mercantile establishment, when used in this chapter, means any place where goods, wares or merchandise are offered for sale.

The term tenement house, where used in this chapter, means any house or building, or portion thereof, which is rented, leased, let or hired out, to be occupied, or is occupied as the home or residence of three families or more living independently of each other, and doing their cooking upon the premises, and having a common right in the halls, stairways, yards, water-closets or privies, or some of them, and for the purposes of this act shall be construed to include any building on the same lot with any dwelling house and which is used for any of the purposes specified in section one hundred of this act.

Sec. 5. *Hours of labor on street surface and elevated railroads.*—Ten consecutive hours' labor, including one-half hour for dinner, shall constitute a day's labor in the operation of all street surface and elevated railroads, of whatever motive power, owned or operated by corporations in this State, whose main line of travel, or whose routes lie principally within the corporate limits of cities of more than one hundred thousand inhabitants. No employe of any such corporation shall be permitted or allowed to work more than ten consecutive hours, including one-half hour for dinner, in any one day of twenty-four hours. In cases of accident or unavoidable delay, extra labor may be performed for extra compensation.

Sec. 6. *Hours of labor in brickyards.*—Ten hours, exclusive of the necessary time for meals, shall constitute a legal day's work in the making of brick in brickyards owned or operated by corporations. No corporation owning or operating such brickyards shall require employes to work more than ten hours in any one day, or to commence work before seven o'clock in the morning. But overwork and work prior to seven o'clock in

the morning for extra compensation may be performed by agreement between employer and employe.

Sec. 7. *Regulation of hours of labor on steam surface and elevated railroads.*—Ten hours' labor, performed within twelve consecutive hours, shall constitute a legal day's labor in the operation of steam surface and elevated railroads owned and operated within this State, except where the mileage system of running trains is in operation. But this section does not apply to the performance of extra hours of labor by conductors, engineers, firemen and trainmen in case of accident or delay resulting therefrom. For each hour of labor performed in any one day in excess of such ten hours, by any such employe, he shall be paid in addition at least one-tenth of his daily compensation. No person or corporation operating a line of railroad of thirty miles in length or over, in whole or in part within this State, shall permit or require a conductor, engineer, fireman or trainman, who has worked in any capacity for twenty-four consecutive hours, to go again on duty or perform any kind of work, until he has had at least eight hours' rest.

Sec. 17. *Seats for female employes.*—Every person employing females in a factory or as waitresses in a hotel or restaurant shall provide and maintain suitable seats for the use of such female employes, and permit the use thereof by such employes to such an extent as may be reasonable for the preservation of their health. (As amended by L. 1900, ch. 533.)

Sec. 77. *Hours of labor of minors and women.*—No minor under the age of sixteen years shall be employed, permitted or suffered to work in any factory in this State before six o'clock in the morning, or after nine o'clock in the evening of any day, or for more than nine hours in any one day. No minor under the age of eighteen years, and no female shall be employed, permitted

or suffered to work in any factory in this State before six o'clock in the morning, or after nine o'clock in the evening of any day; or for more than ten hours in any one day, except to make a shorter work day on the last day of the week; or for more than sixty hours in any one week, or more hours in any one week than will make an average of ten hours per day for the whole number of days so worked. A printed notice, in a form which shall be prescribed and furnished by the commissioner of labor, stating the number of hours per day for each day of the week required of such persons, and the time when such work shall begin and end, shall be kept posted in a conspicuous place in each room where they are employed. But such persons may begin their work after the time for beginning and stop before the time for ending such work, mentioned in such notice, but they shall not otherwise be employed, permitted or suffered to work in such factory except as stated therein. The terms of such notice shall not be changed after the beginning of labor on the first day of the week without the consent of the commissioner of labor. The presence of such persons at work in the factory at any other hours than those stated in the printed notice shall constitute *prima facie* evidence of a violation of this section of the law. (As amended by L. 1889, ch. 192 and L. 1903, ch. 184.)

Sec. 78. *Change of hours of labor of minors and women.*—When in order to make a shorter work day on the last day of the week, a minor over sixteen and under eighteen years of age, or a female sixteen years of age or upwards, is to be required or permitted to work in a factory more than ten hours in a day, the employer of such person shall notify the commissioner of labor in writing, of such intention, stating the number of hours of labor per day, which it is proposed to require or permit, and the time when it is proposed to cease such re-

quirement or permission; a similar notification shall be made when such requirement or permission has actually ceased. A record of the names of the employes thus required or permitted to work overtime, with the amount of such overtime, and the days upon which such work was performed, shall be kept in the office of such factory, and produced upon the demand of the commissioner of labor. (As amended by L. 1899, ch. 192, and L. 1903, ch. 184.)

Sec. 85. *Size of rooms.*—No more employes shall be required or permitted to work in a room in a factory between the hours of six o'clock in the morning and six o'clock in the evening than will allow to each of such employes, not less than two hundred and fifty cubic feet of air space; and, unless by a written permit of the factory inspector, not less than four hundred cubic feet for each employe, so employed between the hours of six o'clock in the evening and six o'clock in the morning, provided such room is lighted by electricity at all times during such hours, while persons are employed therein.

Sec. 92. *Laundries.*—A shop, room or building where one or more persons are employed in doing public laundry work by way of trade or for purposes of gain is a factory within the meaning of this chapter, and shall be subject to the visitation and inspection of the factory inspector, and the provisions of this chapter in the same manner as any other factory. No such public laundry work shall be done in a room used for a sleeping or living room. All such laundries shall be kept in a clean condition and free from vermin and all impurities of an infectious or contagious nature. This section shall not apply to any female engaged in doing custom laundry work at her home for a regular family trade. (Added by L. 1901, ch. 477.)

Sec. 93. *Employment of women and children at polishing or buffing.*—No male child under the age of eigh-

teen years, nor any female, shall be employed in any factory in this State in operating or using any emery, tripoli, rouge, corundum, stone, carborundum or any abrasive, or emery polishing or buffing wheel, where articles of the baser metals or of iridium are manufactured. The owner, agent or lessee of a factory who employs any such person in the performance of such work is guilty of a misdemeanor and upon conviction thereof shall be fined the sum of fifty dollars for each such violation. The commissioner of labor, his assistants and deputies, shall enforce the provisions of this section. (Added by L. 1899, ch. 375; renumbered by L. 1901, ch. 478; amended and renumbered by L. 1903, ch. 561.)

ARTICLE VII.

Tenement-Made Articles.

Section 100. Manufacturing, altering, repairing or finishing articles in tenements.

Sec. 100. *Manufacturing, altering, repairing or finishing articles in tenements.* — No tenement house nor any part thereof shall be used for the purpose of manufacturing, altering, repairing or finishing therein, any coats, vests, knee-pants, trousers, overalls, cloaks, hats, caps, suspenders, jerseys, blouses, dresses, waists, waistbands, underwear, neckwear, furs, fur trimmings, fur garments, skirts, shirts, aprons, purses, pocketbooks, slippers, paper boxes, paper bags, feathers, artificial flowers, cigarettes, cigars or umbrellas, without a license therefor as provided in this article. But nothing herein contained shall apply to collars, cuffs, shirts or shirtwaists made of cotton or linen fabrics that are subjected to the laundrying process before being offered for sale. Application for such a license shall be made to the commissioner of labor by the owner of such tenement house, or

by his duly authorized agent. Such application shall describe the house by street number or otherwise, as the case may be, in such manner as will enable the commissioner of labor easily to find the same; it shall also state the number of apartments in such house; it shall contain the full name and address of the owner of the said house, and shall be in such form as the commissioner of labor may determine. Blank applications shall be prepared and furnished by the commissioner of labor. Upon receipt of such application the commissioner of labor shall consult the records of the local health department or board, or other appropriate local authority charged with the duty of sanitary inspection of such houses; if such records show the presence of any infectious, contagious or communicable disease, or the existence of any uncomplied with orders or violations which indicate the presence of unsanitary conditions in such house, the commissioner of labor, may, without making an inspection of the building, deny such application for a license, and may continue to deny such application until such time as the records of said department, board or other local authority show the said tenement house is free from the presence of infectious, contagious or communicable disease, and from all unsanitary conditions. Before, however, any such license is granted, an inspection of the building sought to be licensed must be made by the commissioner of labor, and a statement must be filed by him as a matter of public record, to the effect that the records of the local health department or board or other appropriate authority charged with the duty of sanitary inspection of such houses, show the existence of no infectious, contagious or communicable disease nor of any unsanitary conditions in the said house; such statement must be dated and signed in ink with the full name of the employe responsible therefor. A similar statement similarly signed, showing the results

of the inspection of the said building must also be filed in the office of the commissioner of labor before any license is granted. If the commissioner of labor ascertain that such building is free from infectious, contagious or communicable disease, that there are no defects of plumbing that will permit the free entrance of sewer air, that such building is in a clean and proper sanitary condition and that the articles specified in this section may be manufactured therein under clean and healthful conditions, he shall grant a license permitting the use of such building, for the purpose of manufacturing, altering, repairing or finishing such articles. Such license shall be framed, such frame to be furnished by the commissioner of labor upon receipt by him of one dollar for which a receipt in writing shall be given, and shall be posted by the owner in a conspicuous place in the public hallway on the entrance floor of the building to which it relates. It may be revoked by the commissioner of labor if the health of the community or of the employes requires it, or if the owner of the said tenement house, or his duly authorized agent fails to comply with the orders of the commissioner of labor within ten days after the receipt of such orders, or if it appears that the building to which such license relates is not in a healthy and proper sanitary condition. In every case where a license is revoked or denied by the commissioner of labor the reasons therefor shall be stated in writing, and the records of such revocation or denial shall be deemed public records. Where a license is revoked, before such tenement house can again be used for the purposes specified in this section, a new license must be obtained, as if no license had previously existed. Every tenement house and all the parts thereof in which any of the articles named in this section are manufactured, altered, repaired or finished shall be kept in a clean and sanitary condition and shall be sub-

ject to inspection and examination by the commissioner of labor, for the purpose of ascertaining whether said garments or articles or part or parts thereof, are clean and free from vermin and every matter of an infectious or contagious nature. An inspection shall be made by the commissioner of labor of each licensed tenement house not less than once in every six months, to determine its sanitary condition, and shall include all parts of such house and the plumbing thereof. Before making such inspection the commissioner of labor may consult the records of the local department or board charged with the duty of sanitary inspection of tenement houses, to determine the frequency of orders issued by such department or board in relation to the said tenement house, since the last inspection of such building was made by the commissioner of labor. Whenever the commissioner of labor finds any unsanitary condition in a tenement house for which a license has been issued as provided in this section, he shall at once issue an order to the owner thereof, directing him to remedy such condition forthwith. Whenever the commissioner of labor finds any of the articles specified in this section manufactured, altered, repaired or finished, or in process thereof, in a room or apartment of a tenement house, and such room or apartment is in a filthy condition, he shall notify the tenants thereof to immediately clean the same, and to maintain it in a cleanly condition at all times; where the commissioner of labor finds such room or apartment to be habitually kept in a filthy condition, he may in his discretion cause to be affixed to the entrance door of such apartment a placard calling attention to such facts and prohibiting the manufacturing, alteration, repair or finishing of said articles therein. No person, except the commissioner of labor, shall remove or deface any such placard so affixed. None of the articles specified in this section shall be

manufactured, altered, repaired or finished in any room or apartment of a tenement house, where there is or has been a case of infectious, contagious or communicable disease in such room or apartments, until such time as the local department or board of health shall certify to the commissioner of labor that such disease has terminated, and that the said room or apartment has been properly disinfected, if disinfection after such disease is required by the local ordinances, or by the rules or regulations of such department or board. None of the articles specified in this section shall be manufactured, altered, repaired, or finished in a part of a cellar or basement of a tenement house, which is more than one-half of its height below the level of the curb or ground outside of or adjoining the same. No person shall hire, employ or contract with any person to manufacture, alter, repair, or finish, any of the articles named in this section in any room or apartment in any tenement house not having a license therefor issued as aforesaid. None of the articles specified in this section shall be manufactured, altered, repaired, or finished in any room or apartment of a tenement house by any person other than the members of the family living therein, which shall include a husband and wife and their children, or the children of either. Nothing in this section contained shall prevent the employment of a tailor or seamstress by any person or family for the purpose of making, altering, repairing, or finishing any article of wearing apparel for the use of such person or family. (As amended by ch. 191, L. of 1899, and ch. 550, L. of 1904.)

Supreme Court of the United States.

No. 292.—October Term, 1904.

Joseph Lochner Plaintiff in Error, vs. The People of the State of New York. } In error to the County Court of Oneida County, State of New York.

[April 17, 1905.]

This is a writ of error to the County Court of Oneida County, in the State of New York, (to which court the record had been remitted,) to review the judgment of the Court of Appeals of that State, affirming the judgment of the Supreme Court, which itself affirmed the judgment of the County Court, convicting the defendant of a misdemeanor on an indictment under a statute of that State, known, by its short title, as the labor law. The section of the statute under which the indictment was found is section 110, and is reproduced in the margin,* (together with the other sections of the labor law upon the subject of bakeries, being sections 111 to 115, both inclusive.)

The indictment averred that the defendant "wrongfully and unlawfully required and permitted an employee working for him in his biscuit, bread

* "§ 110. *Hours of labor in bakeries and confectionery establishments.*—No employee shall be required or permitted to work in a biscuit, bread or cake bakery or confectionery establishment more than sixty hours in any one week, or more than ten hours in any one day, unless for the purpose of making a shorter work day on the last day of the week; nor more hours in any one week than will make an average of ten hours per day for the number of days during such week in which such employee shall work.

"§ 111. *Drainage and plumbing of buildings and rooms occupied by bakeries.*—All buildings or rooms occupied as biscuit, bread, pie or cake bakeries, shall be drained and plumbed in a manner conducive to the proper and healthful sanitary condition thereof, and shall be constructed with air shafts, windows or ventilating pipes, sufficient to insure ventilation. The factory inspector may direct the proper drainage, plumbing and ventilation of such rooms or buildings. No cellar or basement, not now used for a bakery, shall hereafter be so occupied or used, unless the proprietor shall comply with the sanitary provisions of this article.

"§ 112. *Requirements as to rooms, furniture, utensils and manufactured products.*—Every room used for the manufacture of flour or meal food products shall be at least eight feet in height and shall have, if deemed necessary by the factory inspector, an impermeable floor constructed of cement, or of tiles laid in cement, or

and cake bakery and confectionery establishment, at the city of Utica, in this county, to work more than sixty hours in one week," after having been theretofore convicted of a violation of the same act; and therefore, as averred, he committed the crime of misdemeanor, second offence. The plaintiff in error demurred to the indictment on several grounds, one of which was that the facts stated did not constitute a crime. The demurrer was overruled, and the plaintiff in error having refused to plead further, a plea of not guilty was entered by order of the court and the trial commenced, and he was convicted of misdemeanor, second offence, as indicted, and sentenced to pay a fine of $50 and to stand committed until paid, not to exceed fifty days in the Oneida County jail. A certificate of reasonable doubt was granted by the county judge of Oneida County, whereon an appeal was taken to the Appellate Division of the Supreme Court, Fourth Department, where the judgment of conviction was affirmed.

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an additional flooring of wood properly saturated with linseed oil. The side walls of such rooms shall be plastered or wainscoted. The factory inspector may require the side walls and ceiling to be whitewashed at least once in three months. He may also require the wood work of such walls to be painted. The furniture and utensils shall be so arranged as to be readily cleansed and not prevent the proper cleaning of any part of the room. The manufactured flour or meal food products shall be kept in dry and airy rooms, so arranged that the floors, shelves and other facilities for storing the same can be properly cleaned. No domestic animals, except cats, shall be allowed to remain in a room used as a biscuit, bread, pie or cake bakery or any room in such bakery where flour or meal products are stored.

"§ 113. *Wash rooms and closets; sleeping places.*—Every such bakery shall be provided with a proper wash-room and water-closet or water-closets apart from the bake-room, or rooms where the manufacture of such food product is conducted, and no water-closet, earth-closet, privy or ashpit shall be within or connected directly with the bake-room of any bakery, hotel or public restaurant.

"No person shall sleep in a room occupied as a bake-room. Sleeping places for the persons employed in the bakery shall be separate from the rooms where flour or meal food products are manufactured or stored. If the sleeping places are on the same floor where such products are manufactured, stored or sold, the factory inspector may inspect and order them put in a proper sanitary condition.

"§ 114. *Inspection of bakeries.*—The factory inspector shall cause all bakeries to be inspected. If it be found upon such inspection that the bakeries so inspected are constructed and conducted in compliance with the provisions of this chapter, the factory inspector shall issue a certificate to the persons owning or conducting such bakeries.

"§ 115. *Notice requiring alterations.*—If, in the opinion of the factory inspector, alterations are required in or upon premises occupied and used as bakeries, in order to comply with the provisions of this article, a written notice shall be served by him upon the ower, agent or lessee of such premises, either personally or by mail, requiring such alterations to be made within sixty days after such service, and such alterations shall be made accordingly."

(73 Applt. Div. 120.) A further appeal was then taken to the Court of Appeals, where the judgment of conviction was again affirmed. (177 N. Y. 145.)

Mr. Justice PECKHAM, after making the foregoing statement of the facts, delivered the opinion of the Court.

The indictment, it will be seen, charges that the plaintiff in error violated the one hundred and tenth section of Article 8, Chapter 415, of the Laws of 1897, known as the Labor Law of the State of New York, in that he wrongfully and unlawfully required and permitted an employee working for him to work more than sixty hours in one week. There is nothing in any of the opinions delivered in this case, either in the Supreme Court or the Court of Appeals of the State, which construes the section, in using the word "required," as referring to any physical force being used to obtain the labor of an employee. It is assumed that the word means nothing more than the requirement arising from voluntary contract for such labor in excess of the number of hours specified in the statute. There is no pretence in any of the opinions that the statute was intended to meet a case of involuntary labor in any form. All the opinions assume that there is no real distinction, so far as this question is concerned, between the words "required" and "permitted." The mandate of the statute that "no employee shall be required or permitted to work," is the substantial equivalent of an enactment that "no employee shall contract or agree to work," more than ten hours per day, and as there is no provision for special emergencies the statute is mandatory in all cases. It is not an act merely fixing the number of hours which shall constitute a legal day's work, but an absolute prohibition upon the employer, permitting, under any circumstances, more than ten hours work to be done in his establishment. The employee may desire to earn the extra money, which would arise from his working more than the prescribed time, but this statute forbids the employer from permitting the employee to earn it.

The statute necessarily interferes with the right of contract between the employer and employees, concerning the number of hours in which the latter may labor in the bakery of the employer. The general right to make a contract in relation to his business is part of the liberty of the individual protected by the Fourteenth Amendment of the Federal Constitution. (*Allgeyer* v. *Louisiana*, 165 U. S. 578.) Under that provision no State can deprive any person of life, liberty or property without due process of law. The right to purchase or to sell labor is part of the liberty protected by this amendment, unless there are circumstances which exclude the right. There are, however, certain powers, existing in the sovereignty of each State in the Union, somewhat vaguely termed police

powers, the exact description and limitation of which have not been attempted by the courts. Those powers, broadly stated and without, at present, any attempt at a more specific limitation, relate to the safety, health, morals and general welfare of the public. Both property and liberty are held on such reasonable conditions as may be imposed by the governing power of the State in the exercise of those powers, and with such conditions the Fourteenth Amendment was not designed to interfere. (*Mugler* v. *Kansas*, 123 U. S. 623; *In re Kemmler*, 136 Id. 436; *Crowley* v. *Christensen*, 137 Id. 86; *In re Converse*, 137 Id. 624.)

The State, therefore, has power to prevent the individual from making certain kinds of contracts, and in regard to them the Federal Constitution offers no protection. If the contract be one which the State, in the legitimate exercise of its police power, has the right to prohibit, it is not prevented from prohibiting it by the Fourteenth Amendment. Contracts in violation of a statute, either of the Federal or State Government, or a contract to let one's property for immoral purposes, or to do any other unlawful act, could obtain no protection from the Federal Constitution, as coming under the liberty of person or of free contract. Therefore, when the State, by its legislature, in the assumed exercise of its police powers, has passed an act which seriously limits the right to labor or the right of contract in regard to their means of livelihood between persons who are *sui juris*, (both employer and employee,) it becomes of great importance to determine which shall prevail—the right of the individual to labor for such time as he may choose, or the right of the State to prevent the individual from laboring or from entering into any contract to labor, beyond a certain time prescribed by the State.

This court has recognized the existence and upheld the exercise of the police powers of the States in many cases which might fairly be considered as border ones, and it has, in the course of its determination of questions regarding the asserted invalidity of such statutes, on the ground of their violation of the rights secured by the Federal Constitution, been guided by rules of a very liberal nature, the application of which has resulted, in numerous instances, in upholding the validity of State statutes thus assailed. Among the later cases where the State law has been upheld by this court is that of *Holden* v. *Hardy*, (169 U. S. 366.) A provision in the act of the legislature of Utah was there under consideration, the act limiting the employment of workmen in all underground mines or workings, to eight hours per day, "except in cases of emergency, where life or property is in imminent danger." It also limited the hours of labor in smelting and other institutions for the reduction or refining of ores or metals to eight hours per day, except in like cases of emergency. The act was held to be a valid exercise of the police powers of the State. A

review of many of the cases on the subject, decided by this and other courts, is given in the opinion. It was held that the kind of employment, mining, smelting, &c., and the character of the employees in such kinds of labor, were such as to make it reasonable and proper for the State to interfere to prevent the employees from being constrained by the rules laid down by the proprietors in regard to labor. The following citation from the observations of the Supreme Court of Utah in that case was made by the judge writing the opinion of this court, and approved: "The law in question is confined to the protection of that class of people engaged in labor in underground mines, and in smelters and other works wherein ores are reduced and refined. This law applies only to the classes subjected by their employment to the peculiar conditions and effects attending underground mining and work in smelters, and other works for the reduction and refining of ores. Therefore it is not necessary to discuss or decide whether the legislature can fix the hours of labor in other employments."

It will be observed that, even with regard to that class of labor, the Utah statute provided for cases of emergency wherein the provisions of the statute would not apply. The statute now before this court has no emergency clause in it, and, if the statute is valid, there are no circumstances and no emergencies under which the slightest violation of the provisions of the act would be innocent. There is nothing in *Holden* v. *Hardy* which covers the case now before us. Nor does *Atkins* v. *Kansas*, (191 U. S. 207,) touch the case at bar. The Atkins case was decided upon the right of the State to control its municipal corporations and to prescribe the conditions upon which it will permit work of a public character to be done for a municipality. *Knoxville Co.* v. *Harbison*, (183 U. S. 13,) is equally far from an authority for this legislation. The employees in that case were held to be at a disadvantage with the employer in matters of wages, they being miners and coal workers, and the act simply provided for the cashing of coal orders when presented by the miner to the employer.

The latest case decided by this court, involving the police power, is that of *Jacobson* v. *Massachusetts*, decided at this term and reported in 197 U. S. 11. It related to compulsory vaccination, and the law was held valid as a proper exercise of the police powers with reference to the public health. It was stated in the opinion that it was a case "of an adult who, for aught that appears, was himself in perfect health and a fit subject for vaccination, and yet, while remaining in the community, refused to obey the statute and the regulation, adopted in execution of its provisions, for the protection of the public health and the public safety, confessedly endangered by the presence of a dangerous disease." That case is also far from covering the one now before the court.

Petit v. *Minnesota*, (177 U. S. 164,) was upheld as a proper exercise of the police power relating to the observance of Sunday, and the case held that the legislature had the right to declare that, as matter of law, keeping barber shops open on Sunday was not a work of necessity or charity.

It must, of course, be conceded that there is a limit to the valid exercise of the police power by the State. There is no dispute concerning this general proposition. Otherwise the Fourteenth Amendment would have no efficacy and the legislatures of the States would have unbounded power, and it would be enough to say that any piece of legislation was enacted to conserve the morals, the health or the safety of the people; such legislation would be valid, no matter how absolutely without foundation the claim might be. The claim of the police power would be a mere pretext—become another and delusive name for the supreme sovereignty of the State to be exercised free from constitutional restraint. This is not contended for. In every case that comes before this court, therefore, where legislation of this character is concerned and where the protection of the Federal Constitution is sought, the question necessarily arises: Is this a fair, reasonable and appropriate exercise of the police power of the State, or is it an unreasonable, unnecessary and arbitrary interference with the right of the individual to his personal liberty or to enter into those contracts in relation to labor which may seem to him appropriate or necessary for the support of himself and his family? Of course the liberty of contract relating to labor includes both parties to it. The one has as much right to purchase as the other to sell labor.

This is not a question of substituting the judgment of the court for that of the legislature. If the act be within the power of the State it is valid, although the judgment of the court might be totally opposed to the enactment of such a law. But the question would still remain: Is it within the police power of the State? and that question must be answered by the court.

The question whether this act is valid as a labor law, pure and simple, may be dismissed in a few words. There is no reasonable ground for interfering with the liberty of person or the right of free contract, by determining the hours of labor, in the occupation of a baker. There is no contention that bakers as a class are not equal in intelligence and capacity to men in other trades or manual occupations, or that they are not able to assert their rights and care for themselves without the protecting arm of the State, interfering with their independence of judgment and of action. They are in no sense wards of the State. Viewed in the light of a purely labor law, with no reference whatever to the question of health, we think that a law like the one before us involves neither the safety, the morals nor the welfare of the public, and that the interest of the public is not in the slightest degree affected by such an act. The law must be

upheld, if at all, as a law pertaining to the health of the individual engaged in the occupation of a baker. It does not affect any other portion of the public than those who are engaged in that occupation. Clean and wholesome bread does not depend upon whether the baker works but ten hours per day or only sixty hours a week. The limitation of the hours of labor does not come within the police power on that ground.

It is a question of which of two powers or rights shall prevail—the power of the State to legislate or the right of the individual to liberty of person and freedom of contract. The mere assertion that the subject relates though but in a remote degree to the public health does not necessarily render the enactment valid. The act must have a more direct relation, as a means to an end, and the end itself must be appropriate and legitimate, before an act can be held to be valid which interferes with the general right of an individual to be free in his person and in his power to contract in relation to his own labor.

This case has caused much diversity of opinion in the State courts. In the Supreme Court two of the five judges composing the court dissented from the judgment affirming the validity of the act. In the Court of Appeals three of the seven judges also dissented from the judgment upholding the statute. Although found in what is called a labor law of the State, the Court of Appeals has upheld the act as one relating to the public health—in other words, as a health law. One of the judges of the Court of Appeals, in upholding the law, stated that, in his opinion, the regulation in question could not be sustained unless they were able to say, from common knowledge, that working in a bakery and candy factory was an unhealthy employment. The judge held that, while the evidence was not uniform, it still led him to the conclusion that the occupation of a baker or confectioner was unhealthy and tended to result in diseases of the respiratory organs. Three of the judges dissented from that view, and they thought the occupation of a baker was not to such an extent unhealthy as to warrant the interference of the legislature with the liberty of the individual.

We think the limit of the police power has been reached and passed in this case. There is, in our judgment, no reasonable foundation for holding this to be necessary or appropriate as a health law to safeguard the public health or the health of the individuals who are following the trade of a baker. If this statute be valid, and if, therefore, a proper case is made out in which to deny the right of an individual, *sui juris*, as employer or employee, to make contracts for the labor of the latter under the protection of the provisions of the Federal Constitution, there would seem to be no length to which legislation of this nature might not go. The case differs widely, as we have already stated, from the expressions of this

court in regard to laws of this nature, as stated in *Holden* v. *Hardy* and *Jacobson* v. *Massachusetts*, *supra*.

We think that there can be no fair doubt that the trade of a baker, in and of itself, is not an unhealthy one to that degree which would authorize the legislature to interfere with the right to labor, and with the right of free contract on the part of the individual, either as employer or employee. In looking through statistics regarding all trades and occupations, it may be true that the trade of a baker does not appear to be as healthy as some other trades, and is also vastly more healthy than still others. To the common understanding the trade of a baker has never been regarded as an unhealthy one. Very likely physicians would not recommend the exercise of that or of any other trade as a remedy for ill health. Some occupations are more healthy than others, but we think there are none which might not come under the power of the legislature to supervise and control the hours of working therein, if the mere fact that the occupation is not absolutely and perfectly healthy is to confer that right upon the legislative department of the government. It might be safely affirmed that almost all occupations more or less affect the health. There must be more than the mere fact of the possible existence of some small amount of unhealthiness to warrant legislative interference with liberty. It is unfortunately true that labor, even in any department, may possibly carry with it the seeds of unhealthiness. But are we all, on that account, at the mercy of legislative majorities? A printer, a tinsmith, a locksmith, a carpenter, a cabinetmaker, a dry goods clerk, a bank's, a lawyer's or a physician's clerk, or a clerk in almost any kind of business, would all come under the power of the legislature, on this assumption. No trade, no occupation, no mode of earning one's living, could escape this all-pervading power, and the acts of the legislature in limiting the hours of labor in all employments would be valid, although such limitation might seriously cripple the ability of the laborer to support himself and his family. In our large cities there are many buildings into which the sun penetrates for but a short time in each day, and these buildings are occupied by people carrying on the business of bankers, brokers, lawyers, real estate, and many other kinds of business, aided by many clerks, messengers, and other employees. Upon the assumption of the validity of this act under review, it is not possible to say that an act, prohibiting lawyers' or bank clerks, or others, from contracting to labor for their employers more than eight hours a day, would be invalid. It might be said that it is unhealthy to work more than that number of hours in an apartment lighted by artificial light during the working hours of the day; that the occupation of the bank clerk, the lawyer's clerk, the real estate clerk, or the broker's clerk in such offices is therefore unhealthy, and the legislature in its paternal wisdom must, therefore, have the right

to legislate on the subject of and to limit the hours for such labor, and if it exercises that power and its validity be questioned, it is sufficient to say, it has reference to the public health; it has reference to the health of the employees condemned to labor day after day in buildings where the sun never shines; it is a health law, and therefore it is valid, and cannot be questioned by the courts.

It is also urged, pursuing the same line of argument, that it is to the interest of the State that its population should be strong and robust, and therefore any legislation which may be said to tend to make people healthy must be valid as health laws, enacted under the police power. If this be a valid argument and a justification for this kind of legislation, it follows that the protection of the Federal Constitution from undue interference with liberty of person and freedom of contract is visionary, wherever the law is sought to be justified as a valid exercise of the police power. Scarcely any law but might find shelter under such assumptions, and conduct, properly so called, as well as contract, would come under the restrictive sway of the legislature. Not only the hours of employees, but the hours of employers, could be regulated, and doctors, lawyers, scientists, all professional men, as well as athletes and artisans, could be forbidden to fatigue their brains and bodies by prolonged hours of exercise, lest the fighting strength of the State be impaired. We mention these extreme cases because the contention is extreme. We do not believe in the soundness of the views which uphold this law. On the contrary, we think that such a law as this, although passed in the assumed exercise of the police power, and as relating to the public health, or the health of the employees named, is not within that power, and is invalid. The act is not, within any fair meaning of the term, a health law, but is an illegal interference with the rights of individuals, both employers and employe[illegible] to make contracts regarding labor upon such terms as they may think best, or which they may agree upon with the other parties to such contracts. Statutes of the nature of that under review, limiting the hours in which grown and intelligent men may labor to earn their living, are mere meddlesome interferences with the rights of the individual, and they are not saved from condemnation by the claim that they are passed in the exercise of the police power and upon the subject of the health of the individual whose rights are interfered with, unless there be some fair ground, reasonable in and of itself, to say that there is material danger to the public health or to the health of the employees, if the hours of labor are not curtailed. If this be not clearly the case the individuals, whose rights are thus made the subject of legislative interference, are under the protection of the Federal Constitution regarding their liberty of contract as well as of person; and the legislature of the State has no power to limit their right as proposed in this statute. All that it could properly do has been done by

it with regard to the conduct of bakeries, as provided for in the other sections of the act, above set forth. These several sections provide for the inspection of the premises where the bakery is carried on, with regard to furnishing proper wash rooms and water closets, apart from the bake room, also with regard to providing proper drainage, plumbing and painting; the sections, in addition, provide for the height of the ceiling, the cementing or tiling of floors, where necessary in the opinion of the factory inspector, and for other things of that nature; alterations are also provided for and are to be made where necessary in the opinion of the inspector, in order to comply with the provisions of the statute. These various sections may be wise and valid regulations, and they certainly go to the full extent of providing for the cleanliness and the healthiness, so far as possible, of the quarters in which bakeries are to be conducted. Adding to all these requirements, a prohibition to enter into any contract of labor in a bakery for more than a certain number of hours a week, is, in our judgment, so wholly beside the matter of a proper, reasonable and fair provision, as to run counter to that liberty of person and of free contract provided for in the Federal Constitution.

It was further urged on the argument that restricting the hours of labor in the case of bakers was valid because it tended to cleanliness on the part of the workers, as a man was more apt to be cleanly when not overworked, and if cleanly then his "output" was also more likely to be so. What has already been said applies with equal force to this contention. We do not admit the reasoning to be sufficient to justify the claimed right of such interference. The State in that case would assume the position of a supervisor, or *pater familias*, over every act of the individual, and its right of governmental interference with his hours of labor, his hours of exercise, the character thereof, and the extent to which it shall be carried would be recognized and upheld. In our judgment it is not possible in fact to discover the connection between the number of hours a baker may work in the bakery and the healthful quality of the bread made by the workman. The connection, if any exist, is too shadowy and thin to build any argument for the interference of the legislature. If the man works ten hours a day it is all right, but if ten and a half or eleven his health is in danger and his bread may be unhealthy, and, therefore, he shall not be permitted to do it. This, we think, is unreasonable and entirely arbitrary. When assertions such as we have adverted to become necessary in order to give, if possible, a plausible foundation for the contention that the law is a "health law," it gives rise to at least a suspicion that there was some other motive dominating the legislature than the purpose to subserve the public health or welfare.

This interference on the part of the legislatures of the several States with the ordinary trades and occupations of the people seems to be on the

increase. In the Supreme Court of New York, in the case of *People* v. *Beattie*, Appellate Division, First Department, decided in 1904, (89 N. Y. Supp. 193,) a statute regulating the trade of horseshoeing, and requiring the person practicing such trade to be examined and to obtain a certificate from a board of examiners and file the same with the clerk of the county wherein the person proposes to practice such trade, was held invalid, as an arbitrary interference with personal liberty and private property without due process of law. The attempt was made, unsuccessfully, to justify it as a health law.

The same kind of a statute was held invalid (*In re Aubry*) by the Supreme Court of Washington in December, 1904. (78 Pac. Rep. 900.) The court held that the act deprived citizens of their liberty and property without due process of law and denied to them the equal protection of the laws. It also held that the trade of a horseshoer is not a subject of regulation under the police power of the State, as a business concerning and directly affecting the health, welfare or comfort of its inhabitants; and that therefore a law which provided for the examination and registration of horseshoers in certain cities was unconstitutional, as an illegitimate exercise of the police power.

The Supreme Court of Illinois in *Bessette* v. *People*, (193 Ill. 334,) also held that a law of the same nature, providing for the regulation and licensing of horseshoers, was unconstitutional as an illegal interference with the liberty of the individual in adopting and pursuing such calling as he may choose, subject only to the restraint necessary to secure the common welfare. See also *Godcharles* v. *Wigeman*, (113 Penn. St. 431, 437;) *Low* v. *Rees Printing Co.*, (41 Neb. 127, 145.) In these cases the courts upheld the right of free contract and the right to purchase and sell labor upon such terms as the parties may agree to.

It is impossible for us to shut our eyes to the fact that many of the laws of this character, while passed under what is claimed to be the police power for the purpose of protecting the public health or welfare, are, in reality, passed from other motives. We are justified in saying so when, from the character of the law and the subject upon which it legislates, it is apparent that the public health or welfare bears but the most remote relation to the law. The purpose of a statute must be determined from the natural and legal effect of the language employed; and whether it is or is not repugnant to the Constitution of the United States must be determined from the natural effect of such statutes when put into operation, and not from their proclaimed purpose. (*Minnesota* v. *Barber*, 136 U. S. 313; *Brimmer* v. *Rebman*, 138 Id. 78.) The court looks beyond the mere letter of the law in such cases. (*Yick Wo* v. *Hopkins*, 118 U. S. 356.)

It is manifest to us that the limitation of the hours of labor as provided for in this section of the statute under which the indictment was found,

and the plaintiff in error convicted, has no such direct relation to and no such substantial effect upon the health of the employee, as to justify us in regarding the section as really a health law. It seems to us that the real object and purpose were simply to regulate the hours of labor between the master and his employees, (all being men, *sui juris*,) in a private business, not dangerous in any degree to morals or in any real and substantial degree, to the health of the employees. Under such circumstances the freedom of master and employee to contract with each other in relation to their employment, and in defining the same, cannot be prohibited or interfered with, without violating the Federal Constitution.

The judgment of the Court of Appeals of New York as well as that of the Supreme Court and of the County Court of Oneida County must be reversed and the case remanded to the County Court for further proceedings not inconsistent with this opinion.

Reversed.

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

No. 292.—October Term, 1904.

Joseph Lochner, Plaintiff in Error, vs. The People of the State of New York. } In error to the County Court of Oneida County, State of New York.

[April 17th 1905.]

Mr. Justice Harlan (with whom Mr. Justice White and Mr. Justice Day concurred) dissenting.

While this court has not attempted to mark the precise boundaries of what is called the police power of the State, the existence of the power has been uniformly recognized, equally by the Federal and State courts.

All the cases agree that this power extends at least to the protection of the lives, the health and the safety of the public against the injurious exercise by any citizen of his own rights.

In *Patterson* v. *Kentucky*, 97 *U. S.* 501, after referring to the general principle that rights given by the Constitution cannot be impaired by State legislation of any kind, this court said: "It [this court] has, nevertheless, with marked distinctness and uniformity, recognized the necessity, growing out of the fundamental conditions of civil society, of upholding State police regulations which were enacted in good faith, and had appropriate and direct connection with that protection to life, health and property which each State owes to her citizens." So in *Barbier* v. *Connolly*, 113 *U. S.* 27: "But neither the [14th] Amendment—broad and comprehensive as it is—nor any other amendment was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education and good order of the people."

Speaking generally, the State in the exercise of its powers may not unduly interfere with the right of the citizen to enter into contracts that may be necessary and essential in the enjoyment of the inherent rights belonging to every one, among which rights is the right "to be free in the enjoyment of all his faculties, to be free to use them in all lawful ways, to live and work where he will, to earn his livelihood by any lawful calling, to pursue any livelihood or avocation." This was declared in *Allgeyer* v. *Louisiana*, 165 *U. S.* 578, 589. But in the same case it was conceded that the right to contract in relation to persons and property or to do business, within a State, may be "regulated and sometimes prohibited, when the con-

tracts or business conflicted with the policy of the State as contained in its statutes." (*p.* 591.)

So, as said in *Holden* v. *Hardy*, 169 *U. S.* 366, 391: "This right of contract, however, is itself subject to certain limitations which the State may lawfully impose in the exercise of its police powers. While this power is inherent in all governments, is has doubtless been greatly expanded in its application during the past century, owing to an enormous increase in the number of occupations which are dangerous, or so far detrimental to the health of the employés as to demand special precautions for their well-being and protection, or the safety of adjacent property. While this court has held, notably in the cases of *Davidson* v. *New Orleans*, 96 *U. S.* 97, and *Yick Wo.* v. *Hopkins*, 118 *U. S.* 356, that the police power cannot be put forward as an excuse for oppressive and unjust legislation, it may be lawfully resorted to for the purpose of preserving the public health, safety or morals, or the abatement of public nuisances, and a large discretion 'is necessarily vested in the legislature to determine not only what the interests of the public require, but what measures are necessary for the protection of such interests.' *Lawton* v. *Steele*, 152 *U. S.* 133, 136." Referring to the limitations placed by the State upon the hours of workmen, the court in the same case said (*p.* 395:) "These employments, when too long pursued, the legislature has judged to be detrimental to the health of the employés, and, so long as there are reasonable grounds for believing that this is so, its decision upon this subject cannot be reviewed by the Federal courts."

Subsequently in *Gundling* v. *Chicago*, 177 *U. S.* 183, 188, this court said: "Regulations respecting the pursuit of a lawful trade or business are of very frequent occurrence in the various cities of the country, and what such regulations shall be and to what particular trade, business or occupation they shall apply, are questions for the State to determine, and their determination comes within the proper exercise of the police power by the State, and unless the regulations are so utterly unreasonable and extravagant in their nature and purpose that the property and personal rights of the citizen are unnecessarily, and in a manner wholly arbitrary, interfered with or destroyed without due process of law, they do not extend beyond the power of the State to pass, and they form no subject for Federal interference. As stated in *Crowley* v. *Christensen*, 137 *U. S.* 86, 'the possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community.'"

In *St. Louis, Iron Mountain &c. Ry.* v. *Paul*, 173 *U. S.* 404, 409, and in *Knoxville Iron Co.* v. *Harbison*, 183 *U. S.* 13, 21–2, it was dis-

tinctly adjudged that the right of contract was not "absolute, but may be subjected to the restraints demanded by the safety and welfare of the State." Those cases illustrate the extent to which the State may restrict or interfere with the exercise of the right of contracting.

The authorities on the same line are so numerous that further citations are unnecessary.

I take it to be firmly established that what is called the liberty of contract may, within certain limits, be subjected to regulations designed and calculated to promote the general welfare or to guard the public health, the public morals or the public safety. "The liberty secured by the Constitution of the United States to every person within its jurisdiction does not import," this court has recently said, "an absolute right in each person to be at all times and in all circumstances wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good." *Jacobson* v. *Massachusetts*, 196 *U. S.* 11.

Granting then that there is a liberty of contract which cannot be violated even under the sanction of direct legislative enactment, but assuming, as according to settled law we may assume, that such liberty of contract is subject to such regulations as the State may reasonably prescribe for the common good and the well being of society, what are the conditions under which the judiciary may declare such regulations to be in excess of legislative authority and void? Upon this point there is no room for dispute; for, the rule is universal that a legislative enactment, Federal or State, is never to be disregarded or held invalid unless it be, beyond question, plainly and palpably in excess of legislative power. In *Jacobson* v. *Massachusetts*, *supra*, we said that the power of the courts to review legislative action in respect of a matter affecting the general welfare exists *only* "when that which the legislature has done comes within the rule that if a statute purporting to have been enacted to protect the public health, the public morals or the public safety, has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law"—citing *Mugler* v. *Kansas*, 123 *U. S.* 623, 661; *Minnesota* v. *Barber*, 136 *U. S.* 313, 320; *Atkin* v. *Kansas*, 191 *U. S.* 207, 223. If there be doubt as to the validity of the statute, that doubt must therefore be resolved in favor of its validity, and the courts must keep their hands off, leaving the Legislature to meet the responsibility for unwise legislation. If the end which the Legislature seeks to accomplish be one to which its power extends, and if the means employed to that end, although not the wisest or best, are yet not plainly and palpably unauthorized by law, then the court cannot interfere. In other words, when the validity of a statute is questioned, the burden of proof, so to speak, is upon

those who assert it to be unconstitutional. *McCulloch* v. *State of Maryland*, 4 *Wheat.* 316, 421.

Let these principles be applied to the present case. By the statute in question it is provided that, "No employee shall be required or permitted to work in a biscuit, bread or cake bakery or confectionery establishment more than sixty hours in any one week, or more than ten hours in any one day, unless for the purpose of making a shorter work day on the last day of the week; nor more hours in any one week than will make an average of ten hours per day for the number of days during such week in which such employee shall work."

It is plain that this statute was enacted in order to protect the physical well-being of those who work in bakery and confectionery establishments. It may be that the statute had its origin, in part, in the belief that employers and employees in such establishments were not upon an equal footing, and that the necessities of the latter often compelled them to submit to such exactions as unduly taxed their strength. Be this as it may, the statute must be taken as expressing the belief of the people of New York that, as a general rule, and in the case of the average man, labor in excess of sixty hours during a week in such establishments may endanger the health of those who thus labor. Whether or not this be wise legislation it is not the province of the court to inquire. Under our systems of government the courts are not concerned with the wisdom or policy of legislation. So that in determining the question of power to interfere with liberty of contract, the court may inquire whether the means devised by the State are germane to an end which may be lawfully accomplished and have a real or substantial relation to the protection of health, as involved in the daily work of the persons, male and female, engaged in bakery and confectionery establishments. But when this inquiry is entered upon I find it impossible, in view of common experience, to say that there is here no real or substantial relation between the means employed by the State and the end sought to be accomplished by its legislation. *Mugler* v. *Kansas*, *supra*. Nor can I say that the statute has no appropriate or direct connection with that protection to health which each State owes to her citizens, *Patterson* v. *Kentucky*, *supra*; or that it is not promotive of the health of the employés in question, *Holden* v. *Hardy*, *Lawton* v. *Steele*, *supra*; or that the regulation prescribed by the State is utterly unreasonable and extravagant or wholly arbitrary, *Gundling* v. *Chicago*, *supra*. Still less can I say that the statute is, beyond question, a plain, palpable invasion of righs secured by the fundamental law. *Jacobson* v. *Massachusetts*, *supra*. Therefore I submit that this court will transcend its functions if it assumes to annul the statute of New York. It must be remembered that this statute does not apply to all kinds of business. It applies only to work in bakery and confectionery establish-

ments, in which, as all know, the air constantly breathed by workmen is not as pure and healthful as that to be found in some other establishments or out of doors.

Professor Hirt in his treatise on the "Diseases of the Workers" has said: "The labor of the bakers is among the hardest and most laborious imaginable, because it has to be performed under conditions injurious to the health of those engaged in it. It is hard, very hard work, not only because it requires a great deal of physical exertion in an overheated workshop and during unreasonably long hours, but more so because of the erratic demands of the public, compelling the baker to perform the greater part of his work at night, thus depriving him of an opportunity to enjoy the necessary rest and sleep, a fact which is highly injurious to his health." Another writer says: "The constant inhaling of flour dust causes inflammation of the lungs and of the bronchial tubes. The eyes also suffer through this dust, which is responsible for the many cases of running eyes among the bakers. The long hours of toil to which all bakers are subjected produces rheumatism, cramps and swollen legs. The intense heat in the workshops induces the workers to resort to cooling drinks, which together with their habit of exposing the greater part of their bodies to the change in the atmosphere, is another source of a number of diseases of various organs. Nearly all bakers are pale-faced and of more delicate health than the workers of other crafts, which is chiefly due to their hard work and their irregular and unnatural mode of living, whereby the power of resistance against disease is greatly diminished. The average age of a baker is below that of other workmen; they seldom live over their fiftieth year, most of them dying between the ages of forty and fifty. During periods of epidemic diseases the bakers are generally the first to succumb to the disease, and the number swept away during such periods far exceeds the number of other crafts in comparison to the men employed in the respective industries. When, in 1720, the plague visited the city of Marseilles, France, every baker in the city succumbed to the epidemic, which caused considerable excitement in the neighboring cities and resulted in measures for the sanitary protection of the bakers."

In the Eighteenth Annual Report by the New York Bureau of Statistics of Labor it is stated that among the occupations involving exposure to conditions that interfere with nutrition is that of a baker. (*p.* 52.) In that Report it is also stated that "from a social point of view, production will be increased by any change in industrial organization which diminishes the number of idlers, paupers, and criminals. Shorter hours of work, by allower higher standards of comfort and purer family life, promise to enhance the industrial efficiency of the wage-working class—improved health, longer life, more content and greater intelligence and inventiveness." (*p.* 82.)

Statistics show that the average daily working time among workingmen in different countries is, in Australia, 8 hours; in Great Britain, 9; in the United States, 9¾; in Denmark, 9¾; in Norway, 10; Sweden, France and Switzerland, 10½; Germany, 10¼; Belgium, Italy and Austria, 11; and in Russia, 12 hours.

We judicially know that the question of the number of hours during which a workman should continuously labor has been, for a long period, and is yet, a subject of serious consideration among civilized peoples, and by those having special knowledge of the laws of health. Suppose the statute prohibited labor in bakery and confectionery establishments in excess of eighteen hours each day. No one, I take it, could dispute the power of the State to enact such a statute. But the statute before us does not embrace extreme or exceptional cases. It may be said to occupy a middle ground in respect of the hours of labor. What is the true ground for the State to take between legitimate protection, by legislation, of the public health and liberty of contract is not a question easily solved, nor one in respect of which there is or can be absolute certainty. There are very few, if any, questions in political economy about which entire certainty may be predicated. One writer on relation of the State to labor has well said: "The manner, occasion, and degree in which the State may interfere with the industrial freedom of its citizens is one of the most debatable and difficult questions of social science." *Jevons*, 33.

We also judicially know that the number of hours that should constitute a day's labor in particular occupations involving the physical strength and safety of workmen has been the subject of enactments by Congress and by nearly all of the States. Many, if not most, of those enactments fix eight hours as the proper basis of a day's labor.

I do not stop to consider whether any particular view of this economic question presents the sounder theory. What the precise facts are it may be difficult to say. It is enough for the determination of this case, and it is enough for this court to know, that the question is one about which there is room for debate and for an honest difference of opinion. There are many reasons of a weighty, substantial character, based upon the experience of mankind, in support of the theory that, all things considered, more than ten hours' steady work each day, from week to week, in a bakery or confectionery establishment, may endanger the health, and shorten the lives of the workmen, thereby diminishing their physical and mental capacity to serve the State, and to provide for those dependent upon them.

If such reasons exist that ought to be the end of this case, for the State is not amenable to the judiciary, in respect of its legislative enactments, unless such enactments are plainly, palpably, beyond all question, inconsistent with the Constitution of the United States. We are not to presume that the State of New York has acted in bad faith. Nor can we

assume that its Legislature acted without due deliberation, or that it did not determine this question upon the fullest attainable information, and for the common good. We cannot say that the State has acted without reason nor ought we to proceed upon the theory that its action is a mere sham. Our duty, I submit, is to sustain the statute as not being in conflict with the Federal Constitution, for the reason—and such is an all-sufficient reason—it is not shown to be plainly and palpably inconsistent with that instrument. Let the State alone in the management of its purely domestic affairs, so long as it does not appear beyond all question that it has violated the Federal Constitution. This view necessarily results from the principle that the health and safety of the people of a State are primarily for the State to guard and protect.

I take leave to say that the New York statute, in the particulars here involved, cannot be held to be in conflict with the Fourteenth Amendment, without enlarging the scope of the Amendment far beyond its original purpose and without bringing under the supervision of this court matters which have been supposed to belong exclusively to the legislative departments of the several States when exerting their conceded power to guard the health and safety of their citizens by such regulations as they in their wisdom deem best. "Health laws of every description constitute," said Chief Justice Marshall, a part of that mass of legislation which "embraces everything within the territory of a State, not surrendered to the General Government, and which could be most advantageously exercised by the States themselves." *Gibbons* v. *Ogden*, 9 *Wheat.* 1, 203. A decision that the New York statute is void under the Fourteenth Amendment will, in my opinion, involve consequences of a far-reaching and mischievous character; for such a decision would seriously cripple the inherent power of the States to care for the lives, health, and well-being of their citizens. Those are matters which can be best controlled by the States. The preservation of the just powers of the States is quite as vital as the preservation of the powers of the General Government.

When this court had before it the question of the constitutionality of a statute of Kansas making it a criminal offence for a contractor for public work to permit or require his employés to perform labor upon such work in excess of eight hours each day, it was contended that the statute was in derogation of the liberty both of employés and employer. It was further contended that the Kansas statute was mischievous in its tendencies. This court, while disposing of the question only as it affected public work, held that the Kansas statute was not void under the Fourteenth Amendment. But it took occasion to say what may well be here repeated: "The responsibility therefor rests upon legislators, not upon the courts. No evils arising from such legislation could be more far-reaching than those that might come

to our system of government if the judiciary, abandoning the sphere assigned to it by the fundamental law, should enter the domain of legislation, and upon grounds merely of justice or reason or wisdom annul statutes that had received the sanction of the people's representatives. We are reminded by counsel that it is the solemn duty of the courts in cases before them to guard the constitutional rights of the citizen against merely arbitrary power. That is unquestionably true. But it is equally true—indeed, the public interests imperatively demand—that legislative enactments should be recognized and enforced by the courts as embodying the will of the people, unless they are plainly and palpably beyond all question in violation of the fundamental law of the Constitution." *Atkin* v. *Kansas*, 191 *U. S.* 207, 223.

The judgment in my opinion should be affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

No. 292.—October Term, 1904.

Joseph Lochner, Plaintiff in Error, vs. The People of the State of New York. } In Error to the County Court of Oneida County, State of New York.

[April 17, 1905.]

Mr. Justice Holmes dissenting.

I regret sincerely that I am unable to agree with the judgment in this case, and that I think it my duty to express my dissent.

This case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agreed with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law. It is settled by various decisions of this Court that State constitutions and State laws may regulate life in many ways which we as legislators might think as injudicious or if you like as tyrannical as this, and which equally with this interfere with the liberty to contract. Sunday laws and usury laws are ancient examples. A more modern one is the prohibition of lotteries. The liberty of the citizen to do as he likes so long as he does not interfere with the liberty of others to do the same, which has been a shibboleth for some well-known writers, is interfered with by school laws, by the Post Office, by every State or municipal institution which takes his money for purposes thought desirable, whether he likes it or not. The Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics. The other day we sustained the Massachusetts vaccination law. *Jacobson* v. *Massachusetts*, 197 U. S. United States and State statutes and decisions cutting down the liberty to contract by way of combination are familiar to this Court. *Northern Securities Co.* v. *United States*, 193 U. S. 197. Two years ago we upheld the prohibition of sales of stock on margins or for future delivery in the Constitution of California. *Otis* v. *Parker*, 187 U. S. 606. The decision sustaining an eight hour law for miners is still recent. *Holden* v. *Hardy*, 169 U. S. 366. Some of these laws embody convictions or prejudices which judges are likely to share. Some may not. But a Constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the State or of *laissez faire*. It

is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar or novel and even shocking ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States.

General propositions do not decide concrete cases. The decision will depend on a judgment or intuition more subtle than any articulate major premise. But I think that the proposition just stated, if it is accepted, will carry us far toward the end. Every opinion tends to become a law. I think that the word liberty in the Fourteenth Amendment is perverted when it is held to prevent the natural outcome of a dominant opinion, unless it can be said that a rational and fair man necessarily would admit that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law. It does not need research to show that no such sweeping condemnation can be passed upon the statute before us. A reasonable man might think it a proper measure on the score of health. Men whom I certainly could not pronounce unreasonable would uphold it as a first instalment of a general regulation of the hours of work. Whether in the latter aspect it would be open to the charge of inequality I think it unnecessary to discuss.

True copy.

Test:

Clerk Supreme Court, U. S.